

Wills and Trusts – 2010

Property Law Act 2007 s25

Administration Act 1969 ss 2, 24-26, 34 amended, 47-51, 77-79 amended

Family Protection Act 1955 ss 2, 3, 4, 4A, 9, 11, 13

Family Proceedings Act 1980 s 26

Law Reform (Testamentary Promises) Act 1949 s 3

Property (Relationship) Act 1976 (Selected Sections)

Protection of Personal and Property Rights Act 1988 ss 54-55

Te Ture Whenua Māori (Māori Land Act) 1993 ss 2, 3, 17, 100, 101, 104s, 106-114

Trustee Act 1956 (Selected sections)

Wills Act 2007

A. TRUSTS

I. INTRODUCTION

1. A Brief History of Trusts *Scott and Ascher on Trusts 5th ed (2006) 3-9*
2. The Nature of a Trust – S. Gardner *An Introduction to the Law of Trusts* (1990) 1-9 (edited)

II. ESSENTIALS OF A TRUST

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2. **Intention** *Re Burton* [1965] NZLR 712
3. **Subject matter**
HAJ FORD & IJ HARDINGHAM *TRUSTS, COMMENTARY AND MATERIALS* (1990) 297
 - (a) Certainty of Subject Matter
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 - (b) Vesting Title in the Trustee
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 3. **Challenging dispositions to trusts**
 - (a) Insolvency Act 2006
 - (b) Property Law Acts 1952 and 2007
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ss 47, 44 and 44C Property (Relationships) Act 1976
Nations v Nation [2005] NZFLR 103 (CA)

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 - (b) *Re Denley* type purpose trusts
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 ddS Gardner *Introduction to the Law of Trusts* (2002) 149-156
- 2. Tracing into Profits
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 - (ii) Mental infirmity
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 - (iii) Statutory wills under the PPPR Act
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 N Smith *Māori Land Law* 59-60, 62
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 Wills Act 1837 (UK), ss 9 & 21
Re Colling [1972] 3 All ER 729
 Wills Act 2007, ss 7, 11 and 15
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Re Estate of Hickford (Deceased) HC Napier, CIV-2009-441-369, 13/8/09 MacKenzie J

(b) Revocation

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Wills Act 2007, s 16

Wills Act 1837 (UK), ss20

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Wills Act 2007, s 17

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Wills Act 2007, ss 16 and 18

Wills Act 1837 (UK), s 18

Wills Amendment Act 1955, s 13

Public Trust v Stirling [2009] 3 NZLR 693 (HC)

-Dissolution

Wills Act 2007, s 19

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Family Proceedings Act, s 26(1)

(iii) Revocation under the Property (Relationships) Act 1976

Property (Relationships) Act 1976, ss 61, 75-77 & 95

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5. Interpretation of Wills and Trusts

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Re Green [1975] 1 NZLR 475

Wills Act 2007, s 32

Glass v Anthony 9/7/08 Fogarty J, HC Christchurch, CIV 2008-4049-000455

(b) Rectification

Re Jensen [1992] 2 NZLR 506

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6. Gifts by Will

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(b) Debts relating to Specific gifts

Administration Act 1969, s 34

(c) Failure of Gifts

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Wills Act 2007, s 13

Wills Act 1837 (UK), s 15

Wills Amendment Act 1977, s 3

(iii) Forfeiture rule

(iv) Insufficiency of Property

(v) Ademption

Wills Act 2007, s 20

- Re Dorman* [1994] 1 WLR 282
- (v) The Rule against Perpetuities
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- (vi) Lapse
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Problem: *In re Brenda*
Administration Act 1969, s 2
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III CLAIMS AGAINST DECEASED ESTATE

- 1. Mutual Wills**
Lewis v Cotton (2000) 20 FRNZ 86 (CA)
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- 2. Property (Relationships) Act 1976**
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- 3. Testamentary Promises Act**
Law Reform (Testamentary Promises) Act 1949, s 3
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- 4. Family Protection Act**
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Criminal Procedure (Mentally Impaired Persons) Act 2003, ss 4-9, 20-21, 24-25, 33-34

III. INTOXICATION

R v Kamipeli [1975] 2 NZLR 610 (CA)

R v Dixon [2008] 2 NZLR 617, 625-628 (CA)

R v Kingston [1994] QB 81, 84-91 (Eng CA); [1995] 2 AC 355, 360-378 (HL)

Ministry of Transport v Crawford [1988] 1 NZLR 762 (HC)

Sentencing Act 2002, s 9

**LABOUR LAW LAWS 413
EMPLOYMENT RELATIONS ACT 2000 (FULL TEXT)**

**PART I: INTRODUCTION : THE HISTORICAL AND POLICY
CONTEXT**

R v Keite (1697) 91 English Reports 989
Turner v Mason (1845) 153 English Reports 411
W B Creighton, W J Ford, R J Mitchell, *Labour Law* (Sydney 1983),
pp 3-5, 13-18
Inspector of Awards v Priest t/a Renee Foil Printers [1979] ACJ 359
P Churchman & P Roth, "The Philosophy Behind the Employment
Relations Act" *Employment Relations Act 2000*, New Zealand Law
Society Seminar, pp 1-8
Employment Relations Bill, Explanatory Note, pp 1-2
Employment Relations Act, s 3

PART II: THE CONTRACT OF EMPLOMENT

A. The Contract of Service v The Contract for Services

Employment Relations Act s 5 definition of "employment
agreement" : s 6 ("Meaning of employee"): and s 5 definitions
of "homeworker" and "dwellinghouse"
MacGregor v Les Mills Ferrymend Fitness Ltd (Unreported, CA
1/03)
Cunningham v TNT Express Worldwide (NZ) Ltd [1993] 1 ERNZ
695 (CA)
Curlew v Harvey Norman Stores (NZ) Pty Limited [2002] 1 ERNZ
114
Bryson v Three Foot Six Limited [2003] 1 ERNZ 581 (E.C.)
Cashman v Central Regional Health Authority [1997] 1 NZLR 7
(CA)

B. Formation of the Contract of Service

Employment Relations Act, s 5 definition of "person intending
to work", s 60 (object of Part 6)

1. Types of Employment Agreements

Employment Relations Act, s 66 (fixed term agreements); s
67 (probationary arrangements); s 67A-B (trial provisions)
Butler v Pakarae Incorporation (Unreported, AA 194/01)
Smith v Stokes Valley Pharmacy (2009) Limited [2010]
NZEmpC 111

2. General and Formal Requirements

Employment Relations Act, ss 60A-65A; s 5 definitions of
"individual employment agreement", "collective
agreement", "coverage clause" and "employment
agreement"

Warrick Henderson Gallery Ltd v Weston (unreported CA 80/04, 14 Nov 2005)

3. Misrepresentation

Fair Trading Act 1986, s 12

Contractual Remedies Act ss7(1), (3), (4) and 9 (1) (2) (4)

Skywards Catering v Apthorp-Hall [1995] 2 ERNZ 218

Stewart v Industrial Services Nelson Inc, Employment Relations Authority, CA 85/09, 19 June 2009

Murray v Attorney-General in respect of the Inland Revenue Department, Employment Court, Wellington, WC 23/02, 9 July 2002, Goddard CJ

Crimes Act 1961 s 240

4. Unfair bargaining

Employment Relations Act, ss 68-69

C. The Contents of the Contract of Service

1. Express terms: Restraint of trade

Illegal Contracts Act 1970, ss 3, 5-8, 11(1)(a)

H & R Block Ltd v Sanott [1976] 1 NZLR 213

Greenwich v Murray and Stewart (1979) 1 NZIPR 181

Airgas Compressor Specialists v Bryant [1998] 2 ERNZ 42, at 51-55

Fuel Espresso Ltd v Hseih [2007] ERNZ 60 (CA)

2. Incorporated Terms

Duty of good faith: Employment Relations Act, s 4, s 4A

3. Implied Terms

(i) Implied terms generally

New Zealand Merchant Service Guild IUOW Inc v New Zealand Rail Ltd [1991] 2 ERNZ 587

(ii) The Implied Term of Confidence, Trust and Fair Dealing

Auckland Shop Employees Union v Woolworths (New Zealand) Ltd [1985] 2 NZLR 372 (CA)

Marlborough Harbour Board v Goulden [1985] 2 NZLR 378 (CA)

Malik v Bank of Credit and Commerce International (in liquidation) [1997] 3 All ER 1 (HL) – Nicholl and Steyn IJJ only

(iii) Implied Duties of the Employee

New Zealand Airline Pilots' Association v Air New Zealand Ltd [1992] 2 NZLR 656 (CA)

Hodgson v The Warehouse [1998] 3 ERNZ 76

Communications & Energy Workers Union v Tisco [1992] 2 ERNZ 1087

Schilling v Kidd Garrett Ltd [1977] 1 NZLR 243 (CA)

ELL Brigade Road Ltd v Brown, High Court, Christchurch,
CIV-2001-4-9-00073, 5 August 2004, Fogarty J
Faccenda Chicken Ltd v Fowler [1986] 1 All ER 617 (CA)
Peninsular Real Estate Ltd v Harris [1992] 2 NZLR 216

PART III: EMPLOYMENT RELATIONSHIP PROBLEMS

Employment Relations Act, s 5 definition of “employment relationship problem”

A. Specialist Employment Law Institutions

Institutions generally: Employment Relations Act, s 143 (object of part 10)

Mediation services: Employment Relations Act, ss 144, 145, 147, 149, 149A, 150

Employment Relations Authority: Employment Relations Act, ss 157, 159, 160-162, 173, 177, 178, 179, 181

Employment Court: Employment Relations Act, ss 187, 189

Appellate jurisdictions: Employment Relations Act, ss 214, 214A

B. Termination of the employment agreement

A Worker v A Farmer CA552/2009 [2010] NZCA 547

C. Personal Grievances

Employment Relations Act, ss 103, 112, 114-115, 120

1. Unjustifiable Dismissal

(i) General Principles

Employment Relations Act, s 103A

Auckland City Council v Hennessey [1982] ACJ 699

Wellington Road Transport, etc IUOW v Fletcher Construction Co Ltd [1983] ACJ 653

(ii) Misconduct and Poor Performance Cases

W & H Newspapers Ltd v Oram [2001] 3 NZLR 29

Air New Zealand Limited v V [2009] NZEmpC 45

B W Bellis Ltd v Canterbury Hotel, etc, IUOW [1985] ACJ 956

Airline Stewards and Hostesses of New Zealand IUOW v Air New Zealand (1991) 4 NZELC 95, 261

(iii) Constructive Dismissal

Wellington, etc, Clerical, etc, IUOW v Greenwich [1983] ACJ 965

Marshall Cordner & Co v Canterbury Clerical, etc, Workers' IUOW (1987) 1 NZELC 95, 344

Business Distributors Limited v Faruq Mohammed Patel [2001] ERNZ 124

(iv) Redundancy

Vice-Chancellor of Massey University v Wrigley [2011] NZEmpC 37

2. Unjustifiable Action

Alliance Freezing Co (Southland) Ltd v New Zealand Engineering Workers Union [1990] 1 NZLR 533 (CA)

D. Industrial Action

Employment Relations Act, ss 80-88, 97, 99, 100

Carter Holt Harvey v National Distribution Union Inc [2002] 1 ERNZ 239 (CA)

NZ Dairy Workers' Union Inc v Open Country Cheese Company Ltd [2011] NZCA 56

Air Nelson v New Zealand Amalgamated Engineering, Printing and Manufacturing Union Inc [2010] NZSC 53

LAW AND MEDICINE

LAWS 447

MENTAL HEALTH (COMPULSORY ASSESSMENT AND TREATMENT ACT) 1992; FULL TEXT

I. INTRODUCTORY TO NEW ZEALAND HEALTH CARE LAW

1. The Statutory Compensation Scheme and the Limited Role of Tort Actions

Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

Injury Prevention, Rehabilitation and Compensation Act 2001 ss 1-5, 20-21, 25-28, 32-34, 317, 319

2. The Important Role of the Code and the Commissioner

Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996

Health and Disability Commissioner Act 1994 ss 1-75

Human Rights Act 1993 ss 93-94, 98-108

Marks v Director of Health and Disability Proceedings [2009] 3 NZLR 108

3. The Required Standard of Care

Bolam v Friern Hospital Management Committee [1957] 1 WLR 582

Bolitho v City and Hackney Health Authority [1998] AC 232

II. CONSENT TO MEDICAL PROCEDURES

4. Consent to Medical Treatment: Introduction

Health Practitioners Competence Assurance Act 2003 ss 3-4, 7-11, 34-36, 45, 49, 64-71, 84-92, 100-101, 174

State of Queensland v Nolan [2001] QSC 174

5. Capacity/Competence to Consent to Treatment

Re C (Adult: Refusal of Treatment) [1994] 1 WLR 290

Protection of Personal and Property Rights Act 1988 ss 1-10, 12-23, 93A-108

Care of Children Act 2004, ss 1-38

6. The Duty to Inform and Legally Effective Consent

Rogers v Whitaker (1992) 175 CLR 479

B v Medical Council of New Zealand (1996) [2005] 3 NZLR 810
Harman v Director of Proceedings HC Auckland, CIV-2007-404-003732, 12 Mar 2009, Wild J (extracts)
P D G Skegg, "English Medical Law and 'Informed Consent': An Antipodean Assessment and Alternative" (1999) 7 *Medical Law Review* 135-165

7. Legal Justifications for Treatment Without Consent

St George's Healthcare NHS Trust v S [1999] Fam 26-27, 34, 43-50
Re B (Adult: Refusal of medical treatment) [2002] 2 All ER 449
New Zealand Bill of Rights Act 1990 ss 1-11, 13-15, 21-23, 27-28
Mental Health (Compulsory Assessment & Treatment) Act 1992 ss 2, Pt V & s 110A
Tuberculosis Act 1948 s 16
Health Act 1956 ss 79, 88, 90, 126, 129
Alcoholism and Drug Addiction Act 1966 ss 2-3, 9, 38
Contraception, Sterilisation and Abortion Act 1977 ss 4, 7, 34
In re F [1990] AC 70
R v Harris HC, Palmerston North, CRI-2006-054-1008, 21 Nov 2006, Miller J

III. THE END OF LIFE

8. Relief of Pain and Active Euthanasia

Crimes Act 1961 ss 150A-187A

9. Omissions to Prolong Life and 'Passive Euthanasia'

Crimes Act 1961 ss 150A-187A
Airedale NHS Trust v Bland [1993] AC 789, 824-834 (Hoffman LJ in Eng CA)
Re G [1997] 2 NZLR 201
W Healthcare NHS Trust v H [2004] EWCA Civ 1324
Shortland v Northland Health Ltd [1998] 1 NZLR 433
Shortland v Northland Health Ltd M. 75/97 13-14

10. Death

P D G Skegg, "The Edges of Life" (F W Guest Memorial Lecture) (1988) 6 *Otago Law Review* 517

11. Use of Corpses for Medical Purposes

Human Tissue Act 2008
Coroners Act 2006 ss 31-56

LAWS 420

LAW AND THE DEMOCRATIC PROCESS

PART ONE: LAW AND THE ELECTORAL PROCESS

1. Introduction

2. Law and Representative Democracy

- L. Massicotte, et al, "Establishing the Rules of the Game", (2004) pp 3-10 **CM 1**

- A. Gauja, *Political Parties and Elections: Legislating for Representative Democracy* (Ashgate 2010), pp 6-10 **CM 5**
 - A. Geddis, *Electoral Law in New Zealand*, pp 7-23 **CM 8**
- 3. Overview of MMP**
- A. Geddis, *Electoral Law in New Zealand*, pp 24-39
 - *Report of the Electoral Commission on the Review of the MMP Voting System*, 29 October 2012 **CM 19**
- 4. Who Participates – the right to vote.**
- A. Geddis, *Electoral Law in New Zealand*, pp 24-39
 - *Electoral Act 1993*, ss. 60, 72, 74, 75, 80, 82 **CM 41**
 - *New Zealand Bill of Rights Act 1990*, s. 12 **CM 45**
 - A. Geddis, 'Prisoner Voting and Rights Deliberation: How New Zealand's Parliament Failed' (2011) 3 *New Zealand Law Review*, pp 443-467 **CM 46**
- 5. Who Participates – candidates and political parties.**
- A. Geddis, *Electoral Law in New Zealand*, pp 72-82
 - *Electoral Act 1993*, ss. 47-53, 127-128, 143-145, 146D **CM 59**
 - *Electoral Act 1993*, ss. 62-71B **CM 64**
 - Electoral Commission, *News Release: National Front logo registered to appear on ballot papers*, 9 Feb 2006 **CM 71**
 - A. Geddis, "Fighting the 2008 election in the courts", (2008) *NZLJ* 279-282 **CM 72**
 - C. Morris, "Political parties and natural justice", (2008) 399-400 **CM 74**
- 6. Drawing the Electorate Boundaries**
- A. Geddis, *Electoral Law in New Zealand*, pp 83-92
 - *Electoral Act 1993*, ss. 28, 35-38, 46, 269 **CM 76**
 - *Timmins v Governor-General* [1984] 2 *NZLR* 298 **CM 80**
 - **Optional additional reading on reserve:** Graham Beever "The New Game with the old rules: Boundary Determination under MMP", 34 *VUWLR* 135 (2002)
- 7. The Māori Seats**
- A. Geddis, *Electoral Law in New Zealand*, pp 93-110
 - Ann Sullivan, "Māori Participation", in Miller (ed) 5th ed, *NZ Government & Policy*, pp 538-547 **CM 87**
 - *Electoral Act 1993*, ss. 3(1) (definitions of Māori, Māori electoral district, Māori electoral population) 45, 76-79 **CM 92**
 - **Optional additional reading on reserve:** A. Geddis, "A Dual Track Democracy? The Symbolic Role of the Māori Seats in New Zealand's Electoral System", (2006) 5(4) *Election LJ* 347
- 8. Protecting the integrity of the election process**
- A. Geddis, *Electoral Law in New Zealand*, pp 113-132
 - *Electoral Act 1993*, ss. 215-228 **CM 96**
 - *Electoral Act 1993*, s. 199A **CM 96**
 - *Human Rights Act 1993*, s. 61(3), 131-132 **CM 101**
- 9. Funding election campaigns – general issues**
- A. Geddis, *Electoral Law in New Zealand*, 151-157
 - A. Geddis, "Debating Election Finance Reform", in Miller (ed) *NZ Government & Policy*, pp 326-338 **CM 102**

10. Regulating 'third party' election funding

- Andrew Geddis, *Electoral Law in New Zealand* (2nd edition) – **DRAFT ONLY, 9.3 CM 109**
- *Electoral Act 1993*, ss 3A-3E, 204A-204X, 206S-206ZH **CM 115**

11. Regulating the election funding of political parties and individual candidates

- Andrew Geddis, *Electoral Law in New Zealand* (2nd edition) – **DRAFT ONLY, 9.4-9.5 CM 129**
- *Electoral Act 1993*, ss 205-205S, 206-206R, 207-210F **CM 142**

12. Regulating election broadcasting

- A. Geddis, *Electoral Law in New Zealand*, pp 156-170
- *Broadcasting Act 1989*, ss. 69-76, 77-80A **CM 166**
- Electoral Commission, *Decision of the Electoral Commission – Te Kaitiaki Take Kowhiri, on allocation of time and money to eligible political parties for broadcasting of election programmes for the 2011 General Election* **CM 173**
- *Alliance v Electoral Commission* [2010] NZCA 4 **CM 179**

13. Election oversight by Administrative Agencies

- *Electoral Act 1993*, ss 4B-9, 20A-26, 204I **CM 187**
- Justice and Electoral Select Committee, *Electoral (Administration) Amendment Bill 93-2*, pp 1-8 **CM 193**
- "About the Electoral Commission", www.elections.org.nz **CM 197**

14. Election oversight by the Courts

- A. Geddis, *Electoral Law in New Zealand*, pp 219-236
- *Electoral Act 1993*, ss. 229-231; 235-244; 258-260; 262 **CM 198**
- *Payne v Adams* [2009] 3 NZLR 834 **CM 203**
- *Boscawen v Attorney-General* [2009] NZCA 12 **CM 218**
- **Optional on reserve:** J. Boston *et al.* "Courting Change: The Role of the Judiciary in Altering an Electoral System" (1997) 8 *Public LR* 229

15. Election oversight by Parliament

- A. Geddis, *Electoral Law in New Zealand*, pp 237-256
- Justice and Electoral Committee, *Inquiry into the 2008 general election* **CM 227**

PART TWO: LAW AND THE LAWMAKING PROCESS

16. Parliament: its role and its rules

- *Constitution Act 1986*, ss. 10-20 **CM 235**
- D. McGee, *Parliamentary Practice in New Zealand*, pp 1-6; 113-121 **CM 237**

17. The legislative process

- G Palmer & M Palmer, *Bridled Power* (4th ed), pp 181-201 **CM 245**
- R. Malone, "Rebalancing the Constitution", (2008) pp 201-226 **CM 256**
- **Optional additional reading on reserve:** Jeremy Waldron: "Parliamentary Recklessness: Why we need to legislate more carefully"

18. Limits on Parliament's lawmaking powers?

- A. Geddis, *Electoral Law in New Zealand*, pp 45-47
- *Electoral Act 1993*, s. 268 **CM 269**
- *Standing Orders of the House of Representatives*, SO 267 **CM 269**
- *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 **CM 270**
- *Westco Lagan v Attorney-General* [2001] 1 NZLR 40 **CM 273**
- New Zealand Center for Public Law, "Parliamentary Sovereignty", in *Constitutional Arrangements Committee, Inquiry to review New Zealand's existing constitutional arrangements*, Appendix F (2005) **CM 285**
- **Optional additional reading on reserve:** Hon Michael Kirby, "Deep Lying Rights – A Constitutional Conversation Continues" 3(2) *NZJPIL*

19. Parliament and the New Zealand Bill of Rights Act 1990

- *NZBORA 1990*, s 7 **CM 289**
- *Standing Orders of the House of Representatives*, SO 266 **CM 289**
- A. Butler & P. Butler, *The New Zealand Bill of Rights Act: A Commentary*, pp 197-208 **CM 290**
- Legislation Advisory Committee, *Guidelines on Process & Content of Legislation*, ch. 4 **CM 296**
- A. Geddis, "The Comparative Irrelevance of the New Zealand Bill Of Rights Act to Legislative Practice", (2009) 23/4 *NZULR*, pp 465-488 **CM 305**
- Attorney-General's report on Public Safety (Public Protection Orders) Bill, 14 October 2012 **CM 318**

20. Parliamentary Privilege

- *Legislature Act 1908*, s. 242 **CM 321**
- D. McGee, *Parliamentary Practice in New Zealand*, pp 605-616 **CM 322**
- *Buchanan v Jennings* [2004] 3 WLR 1163 **CM 328**
- Privileges Committee, *Question of privilege referred 21 July 1998 concerning Buchanan v. Jennings* (I.17G) (2005) **CM 335**
- *Attorney-General v Leigh* [2011] NZSC 106 **CM 340**

21. Contempt of Parliament

- P. Joseph, *Constitutional and Administrative Law in New Zealand*, pp 450-57 **CM 345**
- *Standing Orders of the House of Representatives*, SO 399-400 **CM 349**
- Privileges Committee, *Question of privilege referred on 16 February on the action taken by Television New Zealand in relation to its chief executive, following evidence he gave to the Finance and Expenditure Committee* (I.17A) (2006) **CM 350**
- A. Geddis, "Fines for Contempt in New Zealand's House of Representatives", [2007] *Public Law* 425 **CM 355**

22. Membership of Parliament

- *Constitutional Act 1986*, ss. 10, 14 **CM 235**
- *Electoral Act 1993*, ss. 54-56 **CM 361**
- C Morris, "On Becoming (and Remaining) a Member of Parliament", [2004] *Public Law* 11 **CM 363**

- A Geddis, "Proportional Representation, 'Party Hopping' and the Limits of Electoral Regulation: A Cautionary Tale from New Zealand", (2006) 34(4) *Common Law World Review* 24 **CM 371**
- **Optional additional reading on reserve:** C Geiringer, "Judging the Politicians: A Case for Judicial Determination of Disputes over the Membership of the House of Representatives", (2005) 3 *NZJPIL* 131.

PART THREE : A DIRECT DEMOCRACY ALTERNATIVE

23. What is Direct Democracy?

- John Parkinson, "Decision-making by Referendum", in Miller (ed) *NZ Government and Politics* pp 571-583 **CM 385**
- Royal Commission on the Electoral System, *Towards a Better Democracy*, pp 167-181 **CM 392**

24. The Citizens' Initiated Referendum Act 1993

- P. Joseph, *Constitutional and Administrative Law in New Zealand*, pp 185-188 **CM 400**
- C. Morris, "Improving Our Democracy or a Fraud on the Community? A Closer Look at New Zealand's Citizens Initiated Referenda Act 1993" 25 *Statute LR* 116 (2004) **CM 402**
- Bridget Fenton & Andrew Geddis, "Citizens Initiated Referenda", (2009) *NZLJ* 334-336 **CM 411**

CRITICAL JURISPRUDENCE LAWS 302

1. Introductory Lecture

- Critical jurisprudence introduced
- The role of background ideas stressed as the key concept for this semester

2. Determinacy and Indeterminacy in Law Revisted

- Gerald Frug, "A Critical Theory of Law" (1989) 1 *Legal Educ. Rev.* 43
- Stanley Fish, *Is There a Text in This Class?* (1980) chs. 13, 14
- Stanley Fish, "The Law Wishes to Have a Formal Existence" in *There's No Such Thing as Free Speech* (1994) 141-156
- Stanley Fish, "There is No Textualist Position" (2005) 42 *San Diego L. Rev* 62

3. Ideology and Politics in Law

(a) Anti-foundationalism, ideology, and critical theory

- Notes: Ideology
- Excerpt from Richard Fischl, "Some Realism About Critical Legal Studies" (1987) 41 *U. Miami L. Rev.* 505 at 527
- Michael Venture, "Someone is Stealing your Life", *Utne Reader*, July/August 1991 at 78-80
- Excerpt from Michael Moore, *Downsize This!* (1996) 282-287

(b) Ideology in law: Overview

- Notes: Gordon

- Robert Gordon, "New Developments in Legal Theory" in *The Politics of Law* (1982) ch. 14
- William Allen, "Contracts and Communities in Corporation Law" (1993) 50 *Wash. & Lee L. Rev.* 1395

(c) Are bills of rights ideological?

(i) Liberalism and bills of rights

- Notes: Liberalism in Context
- Notes: Classical Liberalism and Rights
- Notes: Modern Liberalism and Rights
- Bhikhu Parekh, "The Cultural Particularity of Liberal Democracy" in *Prospects for Democracy* (1993) 156-175

(ii) Critical jurisprudence and bills of rights

- Notes: Critical Jurisprudence and Liberal Rights
- R. H. Tawney, *The Acquisitive Society* (1921) chs. 2, 3
- Morton Horwitz, "Rights" (1988) 23 *Harv. Civ. R/Civ. Lib L Rev.* 393
 - Ronald Beiner, *What's the matter with Liberalism?* (1992), ch. 4
 - Kathleen Mahoney, "The Limits of Liberalism", in *Canadian Perspectives on Legal Theory* (1991) 57

(d) Is criminal law Ideological?

(i) Historical examples

- Notes: Hay
- Douglas Hay, "Property, Authority, and the Criminal Law", in *Albion's Fatal Tree* (1975) ch. 1
- E. P. Thompson, *Whigs and Hunters* (1975) 258-269

(ii) Contemporary examples

- Edwin Sutherland, "White Collar Criminality" in *White Collar Crime* (3rd ed, 1995), originally published 1940, 29-38
- C. M. V. Clarkson, "Kciking Corporate Bodies and Damning Their Souls" (1996) 59 *Modern L. Rev.* 557
- James Gobert, "The Corporate Manslaughter and Corporate Homicide Act 2007" (2008) 71 *Modern L Rev.* 413

(e) Is property law ideological?

(i) Historical examples

- Stuart Banner, "Two Properties, One Land" (1999) 24 *Law and Social Inquiry* 807
- Stuart Banner, "Conquest By Contract: Wealth Transfer and Law Market Structure in Colonial New Zealand", (2000) 34 *Law & Society Review* 47-96

(ii) Contemporary examples

- Michael Robertson, "Property and Ideology" (1995) 8 *Canadian J of Law & Juris.* 275
- Eduardo Penalver, "Property Metaphors and *Kelo v New London*: Two Views of the Castle" (2006) 74 *Fordham L. Rev.* 2971
- Mark Rose, "Copyright and its Metaphors", (2002) 50 *UCLA L Rev.* 1

FAMILY LAW

LAWS 311

[1] Inspirational Verses

Max Ehrmann, "Desiderata"
Calvin Coolidge, "Persistence"
Anon, "When Things Go Wrong"
Edgar Guest, "It's Better to Have Tried"
George Eliot, "To Make This Life Worth-While"
Quotes by Ralph Waldo Emerson and Nelson Mandela

[2] Origins of New Zealand Family Law

Māori Origins – Customary Marriages
Western Origins – Harold Berman, *Law and Revolution, the Formation of the Western Legal Tradition* (Harvard University Press, Cambridge, 1983) at 226-230

[3] Family Law in Action

J v A [1994] NZFLR 205

[4] The Family Court Process

Bruce Fisher and Robert Alberti, *Rebuilding: When Your Relationship Ends* (Impact Publishers, Atascadero, 2003)
A Case for the Use of Conciliation
Issues for the Māori Families in the Family Court
John Eekelaar, "Possible problems with conciliation" in *Family Law and Social Policy* (2nd ed. Weidenfeld and Nicolson, London, 1984) at 59-63
Katherine O'Donovan, *Sexual Division in Law* (Weidenfeld and Nicolson, London, 1985) at 194-2????? xxxILLEGIBLExxx

[5] Disputes Over Who Children Live and Have Contact With

[5.1] Social Science Findings : Helpful or Not?

Mia Kellmer-Pringle, *The Needs of Children* (3rd ed, Routledge, London, 1986) at 15-31, 148-154
Joseph Goldstein, Anna Freud and Albert Solnit, *Beyond the Best Interests of the Child* (Free Press, New York, 1979) at 9-21
Joan B Kelly, "Current Research on Children's Post Divorce Adjustment" (1993) *Family and Conciliation Courts Review* 29-49

[5.2] Day-to-day Care

Whittle v Fagavao [1990] NZFLR 305
B P v D-GSW [1997] NZFLR 642
Powell v Duncan [1996] NZFLR 722
Makiri v Roxburgh (1988) 4 NZFLR 673
Makiri v Roxburgh (No. 2) [1990] NZFLR 182
L v H [2004] NZFLR 1025

[5.3] Relocation

BDD v IBG [2007] NZFLR 1
Kacem v Bashir [2010] NZSC 112, [2010] NZFLR 884

[5.4.] Children's Views

C v S [2006] NZFLR 1

HC v PS CA 115/06, 18 October

[5.5] Alleged Sexual Abuse

De F v De F [1992] NZFLR 167

S v S [1992] NZFLR 803

S v S [1994] NZFLR 26

M v Y [1994] NZFLR 1

[5.6] Alleged Physical Abuse

De Leeuw v Edgumbe [1996] NZFLR 803

C v P [1996] NZFLR 416

[5.7] Contact

Joseph Goldstein, Anna Freud and Albert Solnit, *Beyond the Best Interests of the Child* (Free Press, New York, 1979) at 38

John Eekelaar, *Family Law and Social Policy* (2nd ed, Weidenfeld Nicholson, London, 1984) at 230-233

P v K [2006] NZFLR 22

Pooley v Llewelyn (1985) 3 NZFLR 628

C v D [1992] NZFLR 537

RH v DKH [1996] NZFLR 924

TR v MR [Access] [2007] NZFLR 55

[5.8] Lawyer for the Child

Robert Ludbrook, "The Role of Counsel Appointed to Represent a Child", (1979) 5 *New Zealand Recent Law* at 262-264

"On Party Status and the Right to Representation", *A Child's Right to Representation*, Judge Peter Boshier, *Practice Note – Lawyer for Child – Code of Conduct* (Family Court of New Zealand, Wellington, 2007)

[5.9] Hague Convention

A v A [1996] NZFLR 530

Secretary of Justice v HJ [2006] NZSC 97, [2007] 2 NZLR 289

[6] Who Decides? – Mother? Father? Child? Court?

Regina v Human Fertilisation and Embryology Authority Ex Parte Blood [1996] 3 WLR 1178

Re an unborn child (No 1) [2003] NZFLR 344

Gillick v West Norfolk AHA [1985] 3 WLR 830

In Re W [1992] 3 WLR 758

Re M (Medical Treatment: Consent) [1999] 2 FLR 1097

Re Norma [1992] NZFLR 445

MJB v D-GSW [1996] NZFLR 337

Healthcare Otago Ltd v Williams-Holloway [1999] NZFLR 804

R v Laufau HC Auckland, T000759, 23 August 2000 at [23] to [61]

R v Laufau HC Auckland, T000759, 2 October 2000

R v Moorhead HC Auckland, T011974, 13 June 2002

J v A [2006] NZFLR 405

Re T (A Minor) [1996] EWCA Civ 805

In Re B [1988] AC 199

R X (Sterilisation) (1999) 2 NZFLR 49

[7] Who Can and Who Can't Marry

M v M (marriage: transsexuals) (1991) 8 NZFLR 337

A-G v Family Court 30 Nov 1994
Extracts from *Quilter v A-G* [1998] NZFLR 196 (CA)
Dowling v Matthies and Hooper (1986) 4 NZFLR 118
“Wedding Halted: Family uses law to stop nuptials” (news clip)

[8] Leaving a Violent Relationship

Extract from *Ruka v DSW* [1996] NZFLR 935
Extract from *G v G* [1997] NZFLR 49
A v B [1998] NZFLR 783
P v Police [2006] NZFLR 725
R v Easton [2007] NZFLR 71
A v B [2008] NZFLR 65
R v D [2000] NZFLR 488
S v S [2008] NZCA 565

[9] Money

[9.1] Relationship Maintenance

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[9.3] Child Support

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Sarah Worthington *Equity* (Oxford University press, 2003) pp 47-51

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(ii) Trespass to goods

(iii) Conversion

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(iv) Detinue and the ability to recover the chattel

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(v) Self Help : Recaption

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- Conway v Cockram Motors* [1986] 1 NZLR 381
- Skyway Service Station v McDonald* [1986] 1 NZLR 366

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(d) Sub-bailment

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(iv) Risk of damage or destruction of goods in the course of being sold

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(ii) Constructive Trusts

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Trustee Act 1956, ss 2(4), 13 A-F, M and Q, as amended

(iii) Fiduciary duties: the duty not to profit from the trust

Trustee Act 1956, s 72

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(d) Remedies for breach of trust

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(c) Seeking compensation from the trustee

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(d) Proprietary remedies against the trustee

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(b) Complex mixed claims

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(b) Self-Help

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(b) Risk of damage to property

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(i) A dual relationship: Privity of contract and privity of estate
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(ii) Subleases and assignments
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- (ii) Restrictive Covenants
Law Reform (Testamentary Promises) Act, section 3
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- (iii) Family Protection Claims
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3. To dispose of Māori land on death

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4. To change the status of Māori land to general land

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- (d) Interface with the general law, number 2**

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- (a) What is to be registered?**

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- (b) Getting it wrong**

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- (c) Consequences of getting it wrong (or of not registering a financing statement at all)**

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- (d) Getting it right: what is the effect of valid registration of a financing statement?**

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