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Announcements

Special Issue: Contract Formation, Terms, and Interpretation: Papers by David McLauchlan

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"The Contract that Neither Party Intends"
Victoria University of Wellington Legal Research Paper No. 6/2013

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This article responds to the observations of Heydon and Crennan JJ in the recent case of Byrnes v Kendle concerning, inter alia, the irrelevance of the subjective intentions of contracting parties. Their Honours endorsed the view of the well-known American judge and jurist, Oliver Wendell Holmes, expressed nearly 115 years ago concerning the objective approach to contract formation and interpretation: In particular, they suggested that the law of contract is primarily concerned with finding a correspondence of external signs, that the parties' actual intentions are irrelevant except in 'limited circumstances', and that there can be a binding contract that neither party intends because it is only what the parties said that matters in the law of contract, not what they meant? The author discusses several reasons why this view of basic contract doctrine should be rejected.

"'Contract Interpretation in the Supreme Court — Easy Case, Hard Law?'"
Victoria University of Wellington Legal Research Paper No. 7/2013

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In this article Professor McLauchlan discusses the important decision of the New Zealand Supreme Court in Vector Gas Ltd v Bay of Plenty Energy Ltd. He analyses each of the five judgments and highlights the questions and serious difficulties raised by them. He concludes that the facts of the case ought to have admitted of a relatively simple and principled solution, particularly given that all of the judges accepted, in one context or another, that that there was an objective consensus or common understanding as to the meaning of the words in dispute.

"Lapse of Offers Due to Changed Circumstances: A Contract Conversation"
Journal of Contract Law, Vol. 27, 2011
Victoria University of Wellington Legal Research Paper No. 8/2013

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It is trite law that a change of circumstances between the making of an offer to enter into a contract and a purported acceptance of that offer may render the offer incapable of acceptance so that no contract is in fact formed. The juristic basis of this legal postulate, however, is far from clear and uncontroversial. A rare opportunity for a senior court of an Anglo-Commonwealth legal system to clarify the position was presented to the New Zealand Supreme Court recently in Dysart Timbers Ltd v Nielsen. Unfortunately, the clarification was not forthcoming. In this article, which is written

in the style of a conversation between a law student and his or her contract professor, the authors attempt to expose the court's failure to expound the applicable legal approach in a coordinated, principled and unambiguous way. All the court needed to ask was: in terms of its purported assumption of legal contractual obligation, what would the appellant's offer, read as a whole against the relevant background, reasonably have been understood by the respondent offeree to mean?

"More Construction Controversy"
Victoria University of Wellington Legal Research Paper No. 9/2013

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This article discusses two important developments in the law of contract interpretation since the authors' earlier article in (2011) 28 JCL 101. The first is the decision of the High Court of Australia to decline special leave to appeal from the decision of the NSW Court of Appeal in Jireh International Pty Ltd v Western Export Services Inc and also to take the unusual step of publishing the reasons for doing so. The second is the decision of the United Kingdom Supreme Court in Rainy Sky SA v Kookmin Bank. While at first sight the two cases seem to be at opposing ends of the literal-contextual spectrum of approaches to contract interpretation, closer analysis reveals that they both affirm principles that are inconsistent with Lord Hoffmann's well-known restatement in the ICS case insofar as they employ the concept of ambiguity as a gateway or limiting device: in Jireh to limit regard to evidence of surrounding circumstances; in Rainy Sky, to limit regard to considerations of business common sense.

"The Entire Agreement Clause: Conclusive or a Question of Weight?"
Victoria University of Wellington Legal Research Paper No. 10/2013

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This article addresses the question whether the inclusion of an entire agreement clause in an apparently complete written agreement precludes a finding that, in truth, the parties intended either a partly written and partly oral contract or a written contract and a collateral contract. According to recent decisions of the English courts, the answer is yes. However, the article discusses various reasons why the clause cannot, in principle, be conclusive. It also discusses alternative mechanisms for enforcing an oral undertaking that the evidence establishes was made and was intended to be binding, including the equitable remedy of rectification and, in contrast to English cases supporting the view that the entire agreement clause itself gives rise to a "contractual estoppel", promissory estoppel and estoppel by convention.
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About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included

Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the Law School has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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