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**Abstracts from the Commercial Law and Consumer Protection Interest Group**

**Effectiveness of Chinese Walls in Australia and England**

Andrew Tuch

*Lecturer, Faculty of Law, The University of Sydney*

**Abstract**

The use of Chinese walls and other information barriers is widespread and of critical importance to the effective operation of many professional services organisations, including law firms and financial services conglomerates. The purpose of these barriers is to prevent firms from breaching their duties – where they arise – to protect confidential information and to avoid conflicts of interest. While both Australian and English courts express reluctance to assume the efficacy of such measures, recent decisions suggest that Australian courts are more willing to respect these measures than English courts. This paper will analyse forms and purposes of Chinese walls, discuss the legal principles relevant and compare their apparent effectiveness in these two jurisdictions.

**Current Developments in Partnership Law in Australia. The introduction of the Incorporated Limited Liability Partnership**

Angelo Veljanovski

*Lecturer, Faculty of Business and Law, Victoria University of Technology*

**Abstract**

It is over a decade since Limited Partnerships were inserted into the Partnership Act 1958(Vic). Apart from the common law partnership, the Limited Liability Partnership was the second type of partnership that could be formed under the Victorian Partnership Act 1958 following similar developments in other Australian States. Significant developments in Partnership law overseas, particularly in the United Kingdom has seen the introduction of incorporated limited liability partnerships. The English Limited Liability Partnership Act 2000 is available to the professions as well as others. The use of Limited Partnerships under Part (IV) of the Partnership Act 1958 has being of limited success. In late 2003 the Victorian State Government introduced the Partnership (Capital Venture Funds) Act 2003 which is contained in Part (V) of the Partnership Act 1958 which provides for Incorporated Limited Partnerships. In March 2004 New South Wales adopted similar legislation as has Queensland. It is expected other Australian States will follow suite. This article looks at the introduction of the Incorporated Limited Liability Partnership in Australia and it features.

## **Regulating Business Format Franchising: A Company Law Paradigm**

Gehan Gunasekara

*Senior Lecturer, Department of Commercial Law, The University of Auckland*

### **Abstract**

Franchising, particularly the business format type, has seen spectacular growth in recent years in New Zealand, reflecting its popularity globally. However unlike many other jurisdictions New Zealand has not yet enacted franchise-specific laws to deal with the peculiar difficulties associated with this type of business which despite having tremendous potential also contains opportunities for exploitation. In Australia comprehensive regulation covering franchising and other small business has been in place since 1998. This paper considers regulatory options for franchising in New Zealand. Its central argument is that a franchise is analogous to a business corporation in the way it presents itself to consumers and that accordingly the laws governing it should, as far as possible, follow the regime governing companies. This should apply to relationships within the franchise structure itself (franchisor/franchisee and inter franchisee disputes) as well as between the franchise system and outsiders (consumers and creditors). The paper concentrates on the former and not the latter aspect and examines how a number of issues from pre-contractual disclosures through to relationship disputes (between franchisor and franchisees) arising during the term of the franchise could be resolved by reference to the company law example.

## **Leave to continue proceedings against bankrupts**

Michael Josling

*Lecturer, Department of Commercial Law, The University of Auckland*

### **Abstract**

An essential feature of bankruptcy law is that creditors are prevented from individually pursuing their claims against the estate of the bankrupt. It is said that allowing creditors to do so will result in them receiving an unequal share of the bankrupt's property, and put the Official Assignee to the trouble of defending numerous actions. Section 32 of the Insolvency Act 1967, which stays all claims against the bankrupt, has been taken to give effect to this principle. Pursuant to s32, leave can be obtained to continue the proceedings. The leading decision is *Saimei v McKay* (1998) 6 NZBLC 102,611, which, following Australian authority, imposed a rigorous test on creditors wishing to continue their proceedings. The paper takes the view that the Samei factors are misconceived. Section 32 was not intended to protect the estate of the bankrupt from individual claims; that is done in other parts of the Act. Nor was s32 intended to prevent creditors from proving their claims in court. The paper argues that s32 was simply meant to be a case management tool to assist the parties in selecting the appropriate procedure by which the creditor's claim will be determined. The factors set out in *Samei* are thus largely irrelevant.

## **The response of businesses to paradigmatic changes in legal systems**

Noel Cox

*Senior Lecturer, Faculty of Business, Auckland University of Technology*

### **Abstract**

Just as legal systems may be categorised as being primarily national and international (discounting for the moment the question of regional legal systems within countries, and supranational legal systems), so business responses to changes in legal systems may be seen as having national and international aspects. Changes at each level may have significant effects on businesses, but the effects will differ, depending upon the degree of exposure the particular business faces to international economic or regulatory developments. Technology, and technological changes, affect the legal system. These effects are partly direct, and partly indirect, via changes to the economy and to society. Technological changes are altering the relationship of governed and government, and between government and government. Legal systems also affect the development of technology, and changes in legal systems, whether wrought by technological changes, or otherwise, can have significant effects upon business. This paper considers how business responds to major changes in legal systems, and attempts to identify some common elements which might serve to guide business during times of profound legal change.

## **The Legal Framework for the Provision of ‘Quotes’, A Preliminary Exploration of Law and Practice in New Zealand**

Philippa Wells

### **Abstract**

The provision of “quotes” or “quotations” by those involved in the service industry sectors in particular highlights legal issues. While there is little comprehensive research that reveals how responsibility and risks are managed by those providing quotes, ad hoc evidence suggests there is a growing tendency to reflect uncertainty in prices, duration and costs. This tendency challenges a belief held in some sectors that a quote can be relied upon as a fixed price, and has the potential to reduce the ability of the consumer to question the final outcome or a court or tribunal to establish a fair price. I am in the process of setting up empirical research (through questionnaire) into the accepted meaning(s), use and implications of “quotes” in New Zealand. This paper is an attempt to explore judicial opinion and statutory provisions of relevance as a means of establishing background and framework for the analysis of the empirical research.