



CONVENOR REPORT ON ALTA INTEREST GROUP SESSION

1. Conference Location (tab once): UNIVERSITY OF WAIKATO
(eg University of Waikato) _____
2. Interest Group Name (tab once): EQUITY and TRUSTS
(eg Legal Education) _____
3. Name of Convener (tab once): SUE TAPPENDEN
(**Note:** if you are an alternate
convener, please also fill-in #4) _____
4. Standing-In For (tab once): Tina Cockburn & Melinda Shirley _____
5. Title of Paper(s) and Name of Presenter(s):
(**Note:** Please specify what University/Organisation the Presenter is from)
(eg Law in Australia, Michael Smith, UTS)

There were two papers presented at this session:

(1) *Discretionary Distribution?* by Alan Toy (Otago)

(2) *Equitable Remedies in New Zealand* by Sue Tappenden (Waikato)

6. Number of Attendees at the Session: 9 – 15 (see below)
7. General:
(Comments, Suggestions, or Additional Activities that took place out side the session)

The session went very well, the only disappointing feature being that attendance at the second half was considerably better than at the opening. This, I believe, was due to the clash that occurred between so many interest groups meeting at the same time and people moving from room to room, selecting individual papers to attend rather than whole group presentations. Even with only two papers the discussion continued until the finishing time of 4.30 and there was a lively exchange of ideas.

8. In the space below please summarise what happened in this Interest Group session:
(approx 100 – 150 words, no more than 300 words, this will go in the next *ALTA Newsletter*)

Alan Toy presented an extremely interesting paper which examined the use of principles of *pari passu* in place of tracing in cases of mixed assets. Through the examination of recent New Zealand and Australian decisions and comparison with the approach used by the English Court of Appeal, the paper raised some important issues as to whether property rights are being overridden for the sake of pragmatism in the Courts. The paper was very well received and there was a significant level of audience participation and debate.

The second paper was presented by the chair, Sue Tappenden and was part of a larger work in progress on the development of equitable remedies in New Zealand. The paper examined in part the way in which Australian and New Zealand law has diverged in spite of common origins. The paper suggested that the development of the law in New Zealand allowed for the imposition of fiduciary remedies for loss of opportunity where the primary relationship was one of contract, and also allowed a common law remedy of exemplary damages to be granted in cases of breach of fiduciary duty.

We are very grateful to Sue Tappenden of the University of Waikato, who chaired the interest group session at the conference in our absence, for her assistance and efforts in ensuring that the interest group session ran smoothly and for facilitating such interesting discussions. Sue also made valued contributions to the ALTA review of the role of interest group convenors.

Thank you for your interest in and support of the Equity and Trusts ALTA interest group. We look forward to seeing you all at the 2006 Conference which will be held at the School of Law, Victoria University in Melbourne from the 4th - 7th July 2006.

Tina Cockburn and Melinda Shirley
Queensland University of Technology Faculty of Law

Thank you for your time and thoughts.

Sincerely,
ALTA