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Abstracts from the Jurisprudence and Legal Philosophy Interest Group

Conflicts of Interest a Status Based Approach

Duncan Webb
Associate Professor, School of Law, University of Canterbury

Abstract
This article explores the nature and source of the obligations placed on solicitors who act for two parties to a transaction. We tend to label the problem in such cases as one of conflict of interests, identifying the opposing, or potentially opposing, interests of the two clients as the nub. It is suggested that the older term of conflict of duty is more appropriate. The core issue is not the fact that the clients are in conflict (often they are not) but rather that the solicitor has duties which are inconsistent. It is also of note that such a term distinguishes situations of conflicting duties from situations of a conflict between interest and duty – where the solicitor's own interest conflicts with the duty to the client. The fiduciary obligation is not consent based, rather it arises by operation of law in every relationship which has the necessary ingredients to be marked out as fiduciary, however, fiduciary obligations may be altered by agreement between the affected parties. As between lawyer and client the shape of the duties will depend on the nature of the retainer and the identity of the client. This is distinct from the parties to such a relationship limiting the nature and extent of its obligation by agreement and is dependant not on any mutual consent, but on the nature of the relationship itself. The line between the two, however, may not always be obvious.

Looking at ‘Wrongs’ instead of ‘Rights’: "Shared Bads"

Gay Morgan
Senior Lecturer, Law School, The University of Waikato

Abstract
This paper suggests that liberal rights-based systems focus on rights as tools to facilitate individuals and groups pursuit of the 'good' is wrong-headed and unachievable. It argues this is in no small part due to our inability to agree on even broad plausible conceptions of the good. It suggests that an alternative, perhaps more workable and useful, paradigm would focus on wrongs, or “shared bads” as fundamental conceptual building blocks of the consensus needed for modern systems to govern pluralist and diverse populations with different needs, goals, and aspirations.
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Legal References in New Zealand Fiction: The New Zealand Law in Literature

Grant Morris
Lecturer, Faculty of Law, Victoria University of Wellington

Abstract

Law in Literature is a popular field of Jurisprudence in many jurisdictions, but little has been written on this subject in New Zealand. New Zealand has a rich and diverse body of fictional literature including novels, short stories, plays and poetry. Last year, the New Zealand Law in Literature Project was established in the Faculty of Law at Victoria University of Wellington to provide information on the nature of legal references in New Zealand fiction. This conference presentation will provide an overview of the project by outlining the aims of the endeavour, the process adopted and the format of the findings. The results of the project will then be analysed with comment on key authors, pivotal texts, leading genres and chronological trends. Finally, several case studies will be provided highlighting key legal themes that emerge from the literature. The legal references also shed light on important aspects of the New Zealand legal system and provide perspectives on the law from the viewpoint of writers and the public. Examples of important texts that will be referred to in this paper include "Daughters of Heaven" by Michelanne Forster, "Once were Warriors" by Alan Duff, "Season of the Jew" by Maurice Shadbolt and "Songs to the Judges" by Mervyn Thompson.

Forbidding Dwarf Tossing: Defending Dignity or Discrimination Based on Size?

Julia Davis
Lecturer, Faculty of Law, University of Tasmania

Abstract

In the last half of the twentieth century legislators began to use the idea of human dignity to supplement the traditional concepts of harm and autonomy as the source of principled controls over the state's entitlement to forbid conduct on the pain of criminal punishment. More recently, the concept of dignity has been expressly relied upon by legislators to justify imposing criminal sanctions on those who organise dwarf tossing contests. This paper examines the relative merits of the three suggested candidates for keeping the criminal law within principled boundaries, namely, the harm principle, the principle of autonomy, and the idea of human dignity. It presents a model of criminal wrongdoing that is based on protecting not only our welfare and our autonomy but also our desire to be respected by others as persons of equal dignity, worth and value. It concludes by suggesting that our primary allegiance to the principle that all human beings are equal in dignity will sometimes require us to refrain from criminalising certain controversial kinds of conduct like dwarf tossing that may at first glance appear to be supremely undignified.

The Tort of Seduction? Law and the Devaluation of Human Relations

Michael Stokes
Senior Lecturer, Faculty of Law, University of Tasmania

The lack of a tort of seduction is a symptom of the law's refusal to accord more than instrumental value to human relations. That refusal permeates the whole of the law, affecting the nature of the rights protected, remedies etc. If human relationships are seen as a valuable resource in themselves rather than merely as a means to valuable resources, the resources available for division in a case may be increased by improving the relationship between the parties. This leads to a possibility of winwin solutions to legal disputes rather than win loss ones as the win loss solutions courts currently impose are based on the assumption that resources available for distribution are limited and fixed. That assumption is based on the view that the legal person is a rational maximiser whose basic aim is to increase his/her share of limited scarce resources. Treating the relationship of the parties as a resource suggests a totally different approach the nature of the legal person and to legal decision making, one which attempts to repair and improve the relationship between the parties.