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Cuckoos in the nest
in an otherwise promising jurisdiction



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New Zealand: Cuckoos in the nest in an otherwise promising trust and investment jurisdiction

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New Zealand has a wide range of scenery, an enormous and beautiful coastline, low pollution, a benign climate, wine bettered nowhere on earth, a long history of stable Parliamentary democracy, top educational facilities and opportunities, and sound banks. It has White List status, and a network of 36 double taxation agreements. It makes no fiscal claim on the offshore income of trusts of non-resident settlors. The World Bank's *Doing Business Survey*, which ranks countries on a number of measures relating to the ease of doing business here, places it second only to Singapore.

However, it ranks only twentieth out of the 133 countries surveyed by World Global Forum's annual *Global Competitiveness Report* on factors affecting productivity. So there must be a few cuckoos in the nest.

Micromanagement problem

High on the cuckoo list is a lunatic proclivity for government by micromanagement.

There are encouraging signs that New Zealanders are waking up to the toxic potential of this trait. A recent national referendum demonstrated their contempt for, and demand for the repeal of, legislation interfering with the rights of parents to smack their misbehaving children on the backside.

The furore over the imposition of this legislation justified Bismarck's celebrated comparison of legislation and sausages: you just would not want to know how either were made. It brings to mind an incident during the gradual process of replacing the laws brought by the English settlers, in the nineteenth century, with legislation

created here. When the Crimes Act 1961 was enacted, it abolished common law crimes and terminated the local application of a number of UK enactments. The Witchcraft Act 1735, from the reign of George II, was an example. Also repealed were the Whipping Act 1820, from the reign of George IV, and the Pillory Abolition Act 1816, from the reign of George III: a repeal which, by removing obstacles to the creation of a bondage and domination industry, may well have helped to demonstrate the ease of doing business here, and so attract the attention of the World Bank's *Doing Business Survey* in the first place.

The Crimes Act 1961 repealed, also, the 1285 statute 13 Edw I, ch 34. That is, it abolished the offence of abducting a nun! Concern that this might create open season on convents, or pave the way for people—so to speak—getting into bad habits, abated when it was realised that the offence had been rendered supererogatory by the abduction and kidnapping provisions in ss 208-210 of the new Act.

Nuns were still safe! Just as—so far as the law, alone, can make anyone safe—our children always were kept safe by the assault provisions of the Act. The smacking legislation showed that our politicians' judgment is not always unclouded.

Of course, their judgment plays no part whatever in the next, and economically grave, illustration of the micromanagement fetish: the income tax legislation. There should be a rule that no legislation can be passed until each MP has passed an examination on the Bill. Unfortunately there is no such rule yet. Accordingly, there is not one Member of Parliament who has any idea what she or he is doing when they pass this stuff.

Fifty years ago, under the Colombo Plan, New Zealand used to provide aid to struggling South East Asian nations such as Singapore, Malaysia, and Hong Kong. In his memoirs, *From Third World to First: The Singapore Story 1965-2000*, Lee Kuan Yew wrote well of us, saying that “In my experience, New Zealanders can be depended on to honor their undertakings.”¹

In those days, New Zealand had 300 or so pages of income tax legislation. So did each of Singapore, Malaysia, and Hong Kong.

Today, each of Singapore, Malaysia, and Hong Kong still has 300 or so pages of income tax legislation. New Zealand’s current income tax legislation has ten times that many. The Inland Revenue has a team of people whose full-time task it is to tinker, ceaselessly, with the legislation. It seems to be a cunning plan to disguise the real unemployment figures among the illiterate and the unthinking. The New Zealand definition section is longer than the entire taxation legislation of each of Singapore, Malaysia, and Hong Kong. The latter have few reported tax cases. New Zealand has an industry in them: an industry which diverts, from real productivity, the resources of the commercial sector.

New Zealand is driving with the brakes full on.

As Mr Lee’s chosen title suggests, the South East Asian tigers have dramatically improved their economies over the period of his survey. Over the same period, New Zealand has gone almost as far in the opposite direction: under the deadweight of this monument to the fantasy that it is possible to micromanage tax (or any other law) down to the last detail.

In 1965, on the British withdrawal, Singapore was an economic basket case, with high unemployment, no security, and little to hope for². With a population only about ten per cent larger than New Zealand’s, its GDP now stands at USD237.3 billion against New Zealand’s USD116 billion; its annual exports are eleven times those of New Zealand; and the value of its share market is nearly six times that of New Zealand’s.

“Where there is no vision, the people perish”³.

Litigation problem

The next cuckoo in the nest has similar effects: it is the manner in which litigation is conducted.

New Zealand has not escaped the financial meltdown. Issuers who offered securities on terms less than fully descriptive of the reality have, or soon will have, their backs to the wall civilly,

criminally, or both. Ditto, financial advisers who have gone about their work in ways that mocked their fiduciary duty to eschew conflicts of interest.

Many of these financiers and intermediaries are in this position because they failed to choose skilled and specialist legal advisers, or because they chose legal advisers more for complaisance in signing-off than for skill and integrity.

If the experience of the last few years be anything to go by, some of the cases will be argued by lawyers deficient in skill and experience in the applicable law; and the judges whom they will be addressing will possess no, or scant, grasp of, or experience in, the relevant doctrines of law and of equity.

There is a nice, albeit disturbing, irony in a justice system—bar and bench—undertaking work in matters in respect of which it is unfit for the purpose, when that purpose is to pass judgment on entrepreneurs, financiers, and advisers who themselves stand accused of being unfit for the purposes of the conduct of their trade.

The offending judges and barristers seem oblivious to the perception of the rest of the citizenry that litigation should neither be argued, nor heard, by those lacking the acknowledged skill and experience to come to grips with the given case.

Anyone about to undergo surgery to remove a malignant glioblastoma might be disconcerted were he to discover—with the first incision about to be made—that the operation was to be performed by an orthopaedic surgeon, or by a breast implant surgeon.

The odds of surviving to sell to the popular press one’s story of being the world’s first patient to have had a brain tumour removed through a nipple, or a hip joint, might be so slight as to make the prospect completely unacceptable.

Yet this sort of thing does not just happen in the New Zealand court system, it is a feature of it.

In 1903, a leader of the New York Bar, Francis Wellman, wrote *The Art of Cross Examination*. In the 1928 Revised and Enlarged Edition, he spoke, even then, of specialisation as a critical necessity:

“Who would think nowadays of submitting himself to a serious operation at the hands of his family physician, instead of calling in an experienced surgeon to handle the knife? And yet the family physician may once have been competent to play the part of surgeon, and doubtless has had, years ago, his quota of hospital experience. But he

so infrequently enters the domain of surgery that he shrinks from undertaking it, except under circumstances where there is no alternative. There should be a similar distinction in the legal profession.”⁴

From wide experience, Francis Wellman observed that:

“One has but to frequent the courts to become convinced that, so long as the more than ten thousand members of the New York County Bar all avail themselves of their privilege to appear in court and try their own clients’ cases, the great majority of the trials will be poorly conducted, and much valuable time will be wasted.”

This certainly is so in New Zealand, where the courts produce a plethora of judgments from which it is clear that counsel, or the judge—and frequently both counsel and the judge—have been trying to grapple with areas of the law beyond the level of their skill or experience.

The results are dismaying for many reasons.

First, everything takes much longer, and costs much more than is necessary. How long does it take an amateur chef to botch the boning of a chicken, or a leg, or a rack, of lamb? Vastly longer than a skilled chef takes to perform the job with a much more elegant outcome.

I recently congratulated a High Court judge on a judgment in the area of equitable obligations. I expressed regret that he did not spend all his judicial time dealing with that area of law. His response was that it probably wouldn’t matter what sort of law he was doing: for he finds that there are only very few cases per year in which he gets the time he really needs to prepare a thorough judgment.

If that is so, we are squandering a scarce, valuable, and publicly-funded resource: judicial time. At the same time, we are squandering, also, the scarce, valuable, and privately-raised capital invested in the businesses which have become obliged to divert it into inexpertly-conducted litigation.

Because judicial time is being allocated inefficiently, we need more judges than would be required if they were to stick to cases in their areas of skill and experience. To pay for these extra judges we must raise taxes to a higher level than otherwise would have been necessary. Those additional judges, furthermore, must be drawn from a pool the upper strata of which are competent but small, and the lower strata of which include many strugglers and stragglers. As it becomes necessary to dip into those lower strata, there is

a compounding of the already-existing inefficiency and waste.

Standing, as we do, on the cusp of an era of grossly depleted world-wide capital resources, this is imposing a drain on business capital: starving business of the lifeblood without which it can only produce less of the income from which these higher taxes will have to be paid.

The country is strangling itself.

Secondly, New Zealand law is becoming corrupted. Decisions of higher courts are binding on lower courts. So an inadequate, or even a silly, judgment of the High Court is binding on the Family Court, or the District Court.

Silly decisions there are. In the trust area, for example, Professor Waters QC was “taken aback”⁵ by *Harrison v Harrison*⁶. That characteristically mild comment was stretching charity past breaking point. Embarking on an unbidden frolic of his own, the judge devoted a third of his reasons for judgment to a farrago of equitable nonsense, none of which seems to have been tested in argument with counsel.

Sooner or later this stuff will be picked up by practitioners in the Family Court or District Court. They will cite it as a binding precedent. Just as, according to Gresham’s Law, bad currency drives out good, so these “authorities” pervert the law—and therefore justice—as they re-cycle through the system. [Thanks particularly to Tipping and Blanchard JJ, the Supreme Court is making a wonderful fist of equity matters: but it is wrong to subject litigants to two rounds, and several years, of costly uncertainty over whether they will, or will not, be allocated a judge with the relevant expertise before they get a chance to even seek leave to argue in that court.]

Inadequate trust and fiduciary decisions likewise abound.

For example, one could take from the confused and opaque—despite a 12 month gestation period—judgment of the Court of Appeal in *Kain v Hutton*⁷ the impression that there was no difference between a power of advancement and a power to accelerate vesting.

Again, New Zealand courts regularly announce “fiduciary duties” which are nothing of the sort. In *Hung and Fung v Yu and National Investments Ltd*,⁸ the High Court referred to a “fiduciary duty” to act “with reasonable skill”⁹. It did so without reference to any of the dicta of high authority to the effect that a duty to act with care and skill is not a fiduciary duty—it does not engage the duty of loyalty¹⁰.

Decisions of courts of co-ordinate, or equal, jurisdiction, are not binding on other judges of those courts. However, busy judges find it easy to, and do gratefully, follow any other judgment laying down apparently useful legal propositions: notwithstanding that—for lack of properly skilled argument, for lack of relevant experience and skill on their own part, and for lack of time—they will be unable to deal adequately with the issues.

In addition to the evident deficiency in the judge’s skill in the area of law in issue, a regular feature of these cases appears to be a lack of sufficiently skilled argument drawing the attention of the court to material principles and authorities.

Thus the law becomes corrupted. As when software has become corrupted: systemic malfunction has followed ineluctably. It has become increasingly common for judges, lacking the proper skills to cut through baseless and confused argument, to cover their lack of capacity, and their despair at the incompetence of the submissions, with fulminations that the case is one “crying out for mediation”.

That is a questionable way of discharging the judicial oath: “to do right to all manner of people after the laws and usages of New Zealand”¹¹. It is questionable whether it is justice according to law. It is questionable whether it is justice at all.

This is not to denigrate either the practising or the judicial branch of the profession. At page 5 of the book I have cited earlier, Francis Wellman exempts, from the requirement to specialise in order to avoid incompetence, only “that small minority of men in all walks of life who have been touched by the magic wand of genius”.

Apart from that supergifted handful, and apart from the totally ungifted rump—who ought to be retraining at dental school—the rest of us can acquire, by study and experience, a respectable command of only a very few areas of the law.

Bench, and bar, both, should stick to these. They cheat the country by dabbling in areas in which they are not acknowledged to have special competence. This is axiomatic in the health system. That it is not accepted as axiomatic in the legal system, also, is an indictment of its practitioners.

According to a current Justice of the High Court of Australia, New South Wales has had specialist equity judges since 1840,¹² when its population surely was a great deal smaller than the 2009 population of New Zealand. As is only to be expected, many New Zealand judges, and even more New Zealand

solicitors and counsel, are not comfortable when equity and fiduciary matters are in contest: just as there are many who are out of their comfort zones in various other areas of the law. The composition of the permanent bench should always reflect, and properly deploy, the appropriate range of specialist skills. Whatever the area of law, any shortage of expertise can always be plugged by adopting the English model of Deputy High Court Judges drawn from the senior ranks of the Bar: a system with many advantages.

In *The Times*, 16 May 2006, a year after he resigned from the Chancery Division, Sir Hugh Laddie was lauded for his practice of reading the papers in advance, and making clear to counsel his preliminary view. Following his death on 29 November 2008, *The Telegraph* reported that it had:

“sent a reporter to watch him in action during one of his last cases on the bench. The journalist’s verdict was that with Laddie presiding the mills of justice turned exceedingly quickly. A day had been set aside for one case which Laddie disposed of in an hour and 12 minutes. ‘If Laddie had been around in Dickens’ day,’ the reporter noted, ‘*Jarndyce and Jarndyce* would have been over by lunchtime and *Bleak House* would have been a novella.”

This is something that only a judge experienced in the particular area of the law can do with any confidence or integrity.

It is critical to get as quickly as possible to the vital point on which every case ultimately turns. Yet the causes of action frequently are not accurately identified even by the close of argument. That always is, initially, the fault of counsel. Once seised of the case, the judge becomes equally at fault if, for lack of sufficient command of the area, she or he fails to follow the Laddie example of cutting to the chase.

In a 15 June 1999 lecture to the Chancery Bar Association, “Common Sense and Causing Loss”, Lord Hoffman referred to the ways in which a judge who, for lack of mastery of the relevant law, shelters behind phrases like “it is a matter of impression”, “doing the best I can”, or “it is a matter of common sense”.

His Lordship remarked that: “judges cause confusion when they say ‘that is a question of fact’ without telling you what the question is. But unless you know the question, you will not be able to get the right answer. Once the question has been identified, the answer is usually relatively easy”.

This is always the way in which one marks student exam papers in law: if the student can identify the question, then he or she must at least pass. If at least the right question is at least being asked, the answer will be reached with appropriate thought and debate.

A little later His Lordship said further:

“The reason why courts get the wrong answer on questions of causation is not usually because they have misunderstood the facts or lack common sense but because they have got the law wrong. They have misconstrued the proper scope of the rule which imposes liability, the rule which provides the context in which the question of causation is being asked. *They have asked the wrong question rather than got the wrong answer.*”

Because the courts do not deploy their judges rationally and sensibly, and because far too many barristers undertake cases in which they lack mastery of the relevant area of the law, cases are foredoomed to bogging down *because the right question is not being considered, or even asked.*

The official response is to avoid the problem by pretending that it lies elsewhere—in the Rules of Court, say—and then fiddling with those to “make things better”. As Sir Hugh Laddie said, of such diversionary tactics, “you don’t turn a dog into a cat by calling it ‘kitty’.”¹³

In *The Times* interview of 16 May 2006, Sir Hugh restated his objection—which contributed to his decision to resign as a judge—to sitting on cases beyond his expertise:

“Had he taken a case outside his field at the Bar, he’d have left himself open to a negligence action, he says. But the moment he was a judge he was expected to do just that. ‘It was challenging—like high-wire walking—but I didn’t think it fair for clients to be learning at their expense.’ Most worrying were the cases involving unrepresented litigants, with applications ‘in an area of law that I knew nothing about.’”

It is not unknown in New Zealand for a judge to sit—with lamentable consequences—on cases in areas of law in which, whilst in practice, they were not only unskilled, but were found by the courts to have been negligent, and ordered to pay substantial damages, for harm arising precisely from their lack of skill in that particular area.

That this should happen is madness. It is wrong on any view of it.

It is no disrespect to any professional practitioner—solicitor, counsel, judge, surgeon, or engineer—

to require that they leave alone matters in which they are not well skilled and experienced. There is a sore need in New Zealand for Sir Hugh Laddie’s clear sighted view. There is increasing professional disquiet at its lack. It is unfair and unjust to litigants that judges should be learning (or, where counsel also are insufficiently aware of the relevant law, just listening) at their expense.

Senior voices calling for specialisation continue to be ignored, including Dr JA Farmer QC, former President of the New Zealand Bar Association, and one of the most respected and able counsel to have practised here. Another eminent voice—former High Court judge, and now internationally acknowledged commercial arbitrator—David Williams QC, has observed that, in New Zealand:

“the commercial community is bailing out of civil litigation [because of] ... ‘continuing, long-running unhappiness’ with the [apparent] refusal to let judges specialise in either commercial or criminal [or, one would have to add, equitable] matters’.”¹⁴

Professor McLachlan, a distinguished academic in the field of contract law, began an article “Defying Common Sense in Contract” [2005] NZLJ 300 in the following way:

“I spend a good deal of my working life reading contract cases.

Naturally, many of these are New Zealand cases, but in recent times the numbers have diminished.

Increasingly I find them not worth the effort. Far too often the judgments from the High Court and Court of Appeal leave me dismayed. There are exceptions of course, but overall the standard of judicial decision-making and reasoning is disappointing. Judgments regularly apply textbook rules without displaying any feel for the underlying principles and purposes of contract law. Decisions are reached that fail to reflect the reasonable expectations of the parties. And sometimes they simply defy common sense.”

The Professor proceeded to analyse a particular decision which had gone up to the Court of Appeal. Having begun with that swipe at the bench, he ended with a swipe at the bar. After having referred to a number of principles that, in his view, should have been recognised as in play in the case on which he was commenting, he concluded that “*it is surprising that these arguments have not featured in the litigation to date*”—notwithstanding that

it had been argued both in the High Court and in the Court of Appeal.

This is a problem of bar *and* bench: not of one or the other.

It seems that tort law is beset with the same problem. The “leaky homes” cases—involving mass incompetence of architects, builders, local government building certifiers, and central government legislative tinkering—are causing problems for plaintiffs seeking to ascribe tortious liability to directors of building companies which have gone into liquidation. Professor Watts,¹⁵ is clearly surprised that neither the courts nor counsel have raised, let alone examined, the angle of liability of directors for breaches of their duties of care to the company. He considers that they might:

“find that the nexus of contract provides a method of recourse that does not involve pushing at the boundaries of tort, nor disguised piercing of the corporate veil. Modern company law does not allow directors to contract out of their duties of care, and if with due care they could have prevented the companies from breaking the contracts under which the buildings were developed and built they will be liable in the liquidation...”

It happens, and it is regrettable, that judges who are experienced criminal lawyers are assigned to cases requiring the unravelling of the intricacies of the rule against perpetuities in the trust area, or navigation of the notoriously tricky capital-income divide in a revenue matter.

It also happens, and it is equally regrettable, that a judge who is an experienced equity lawyer can be assigned to preside over drug, rape, homicide, or kidnapping trials. Anyone whose freedom is at risk over serious criminal charges is entitled to a trial presided over by a judge seasoned and skilled in criminal law and evidence—territory where intimate familiarity with the maxims of equity cuts no ice at all.

One does not have to *imagine* the consequences of such mismatches between the skills of the judge and the nature of the litigation. These consequences appear starkly in the law reports. In *R v Howse*¹⁶ the Privy Council confirmed that the trial judge, in the New Zealand High Court, had been a fish out of water: admitting inadmissible evidence, admitting evidence the prejudicial effect of which outweighed its probative value, failing to instruct jurors that allegations were not proof, summing up in terms that were “emotional and prejudicial to the accused”,¹⁷ and generally permitting to

happen what the minority judgment described as:

“impossible to imagine a clearer example of a trial that has gone off the rails [and become] an unfair trial. We could use more robust language to describe it but, with difficulty, restrain ourselves from doing so.”¹⁸

New Zealand is driving with the brakes on in this respect also.

Law reform problem

After a 2002 New Zealand Law Commission report canvassed a number of housekeeping proposals, a Trustee Amendment Bill was introduced in 2007. The Justice and Electoral Committee was unhappy with it. In the light of New Zealand’s systemic aversion to placing trust and equity matters before judges of acknowledged competence a highly disturbing feature of the report of that Committee was its recommendation that District Courts be given jurisdiction over breach of trust cases within their monetary jurisdiction. The Committee made the assertion that “it is appropriate to have most such cases heard in District Courts, and having these cases heard in the High Court might result in delays and high costs for beneficiaries.” Given the difficulties in finding judges in the High Court who are truly at home in trustee and fiduciary law, the proposition that trust cases should be heard in a court of which even fewer judges are likely to be skilled and experienced in equity and trusts, makes the Committee’s report in this respect quite mystifying.

Lessons for offshore world

For the past several years I have been placing before the annual Offshore Seminar, at Jesus College, detailed reasons why the offshore world of secrecy was dead in the water. Six or seven—or even two or three—years ago, I used to get the feeling that the participants considered that I was propounding heresy. No one can doubt that it is now fact¹⁹.

I always offered a counterpoint: that there is no reason why the offshore world of investment skill, reinsurance expertise, mastery of aircraft and project financing, acknowledged depth in trusteeship and frequently commensurate judicial skills, should not continue to prosper.

If the offshore world wants that outcome, there are lessons to be learned from all the wrong turnings New Zealand has been taking.

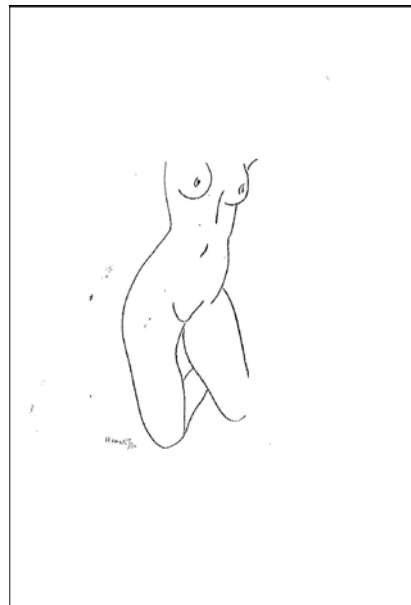
First, keep the law current. Sitkoff and Schanzenbach²⁰ studied the abolition of the Rule against Remoteness of Vesting

in 17 States of the USA. They cited the official synopsis of the abolition Bill in Delaware, the first state to have made the move:

“Several states, including Idaho, Wisconsin and South Dakota, have abolished altogether their rules against perpetuities, which has given those jurisdictions a competitive advantage over Delaware in attracting assets held in trusts created for estate planning purposes... The multi-million dollar capital commitments to these irrevocable trusts, and the ensuing compound growth over decades, will result in the formation of a substantial capital base in the innovative jurisdictions that have abolished the rule against perpetuities.”²¹

Their article notes that, over its 1985 - 2003 data time frame, “roughly USD 100 billion in trust assets have moved as a result of the Rule’s abolition.”²²

Secondly, keep the law elegant. As the Matisse nude illustrates, much can be said clearly with few lines.



Thirdly, demand competence of the courts and the bar. Many of the offshore jurisdictions have jurists of deserved international repute in the finance and trust and fiduciary areas: Michael Birt, the Bailiff of Jersey, Deemster Cain, of the Isle of Man High Court, and the Hon Anthony Smellie CJ, of the Cayman Islands, are well known and respected. Many of these jurisdictions also tap the Bar for further specialist skills on an ad hoc basis.

Finally, never forget that “Where there is no vision, the people perish”²³.

At the moment, New Zealand is letting itself down in every respect. If it wants to back its claim to be a serious trust jurisdiction, it has much catching up to do.

ENDNOTES:

- † New Zealand’s senior practising Queen’s Counsel. Co-Editor of *Trusts and Trustees*. Lecturer for some years at the annual *Offshore Symposium* at Jesus College, Oxford. His expert evidence on financial and fiscal matters was relied on by the High Court in New Zealand’s longest criminal trial, the judgment in which described him as an “acknowledged expert in taxation”. In the June 2009 issue of *Trusts and Trustees*, recently-retired Chancery Division judge, Sir Gavin Lightman, referred to him as “an acknowledged expert” on trusts.
1. Harper Collins, New York, 2000, 402.
2. *Ibid* 44.
3. Proverbs of Solomon 29:11.
4. (McMillan, New York), 3-5.
5. “Settlor Control: What Kind Of Problem Is It?” *Trusts & Trustees Vol 15, No 1* (March 2009).
6. Civ 2008-404-001270 (Auckland Registry) 18 September 2008.
7. [2007] WTLR 1751, and (incompletely) [2007] 3 NZLR 349.
8. CP 13-99 (Auckland Registry) 9 February 2000, para 61.
9. *Similarly Aratiki Properties Ltd v Craig* [1986] 2 NZLR 294 (CA); *BNZ v Evans CP 973* (Auckland Registry) 23 November 1992.
10. *Permanent Building Society v Wheeler* (1994) 11 WAR 187, 237 (1pp J), followed in *Bristol & West Building Society v Mothew* [1998] 1 Ch 1 (CA), which, in turn, was followed in *BNZ v Guardian Trust Co Ltd* [1999] 1 NZLR 664 (CA).
11. Oaths and Declarations Act 1957 s 18.
12. Haydon, “The Role of the Equity Bar in the Judicature Era” in Lindsay and Webster (eds) *No Mere Mouthpiece: Servants of All Yet of None—New South Wales Bar Association Centenary Essays* (2002) 71.
13. Louis Blom-Cooper and Robin Jacob, *Obituary | Sir Hugh Laddie*, *The Guardian*, 2 December 2008.
14. “Litigants turn their backs on courts”, Jenni McManus, *The Independent*, 26 June 2008, 6.
15. “Directors’ and Managers’ Liability—Turning the Blowdryer on Leaky Building Torts” [2009] *Company & Securities Law Bulletin* 85.
16. [2006] 1 NZLR 433.
17. *Ibid* 448, per the majority.
18. *Ibid* 457, per the minority.
19. Cf Angel Gurria, “The End of the Tax-Haven Era”, *The Guardian* 31 August 2009, <http://www.guardian.co.uk/commentisfree/2009/aug/31/economic-crisis-tax-evasion>, site last visited 16 September 2009.
20. “Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes,” 115 *Yale LJ* 356.
21. *Ibid* 376.
22. *Ibid* 379.
23. Proverbs of Solomon 29:11.