

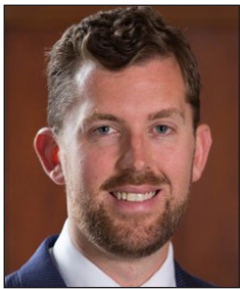
CHAIR



Juliet Moses, TGT Legal, Auckland

Juliet specialises in trusts and succession planning. She is a regular presenter of seminars in the area, including at the NZLS CLE Trusts conferences. She is Chair of the STEP Education Committee and a contributing author and tutor of the Trusts and Estates Diploma (NZ). Juliet is also a member of the International Academy of Trust and Estate Law.

SPEAKERS



Gregory Ambler, TGT Legal, Auckland

Gregory specialises in the law of trusts and succession. He provides advice on asset planning, assists with the establishment and administration of trusts and charitable entities, and also advises on the legal aspects of mental capacity and adult decision-making.



Dr Jane Casey, Consultant Psychiatrist specialist in Old Age Psychiatry, Auckland

Jane is a consultant psychiatrist, specialising in Old Age Psychiatry, working in both the public and private sectors and as an Honorary Senior Lecturer at the University of Auckland. She obtained her MBChB from the University of Auckland, 1987; is a Fellow of the Royal Australian and New Zealand College of Psychiatrists (FRANZCP), 1994, immediate past Bi-national Chair of the Faculty of Psychiatry of Old Age and a member of the International Psychogeriatric Association Capacity Special Interest Forum. Jane's areas of expertise include mood disorders, dementia and the related topics of elder abuse and capacity assessments. She has considerable experience in writing expert opinion reports in relation to the Mental Health Act, PPPR Act and mental capacity cases, including capacity to appoint Enduring Powers of Attorney and Testamentary capacity.



Jeremy Johnson, Bankside Chambers, Auckland

Jeremy is a barrister at Bankside Chambers. He has expertise in equity and trusts, commercial disputes and relationship property. Jeremy is graduate of the University of Canterbury and the University of Cambridge. He is a member of the Society of Trust and Estate Practitioners (STEP) and is a Fellow of the Arbitrators' and Mediators' Institute of New Zealand.

SPEAKERS



Kimberly Lawrence, Greg Kelly Law, Wellington

Kimberly provides strategic advice to clients dealing with difficult trust and estate problems, and acts in relation to trust and estate litigation of all kinds.



James Little, Shortland Chambers, Auckland

James has a broad civil, commercial and public law practice. He has particular expertise in complex trusts, equity, estates and property disputes. James also has a significant advisory practice.



Tom Maasland, MinterEllisonRuddWatts, Auckland

Tom is an internationally recognised, award-winning technology law specialist with strong “black letter law” skills that he combines with a commercially pragmatic approach – traits highly valued by clients. He is passionate about technology and telecommunications, their everyday use, and their ability to transform organisations. This is a passion borne out of working in the industry for more than 20 years in both New Zealand and the UK. Tom advises on all technology law issues. He co-leads MinterEllisonRuddWatts’ Tech Innovation team, which is responsible for the development and implementation of technology solutions for internal use and for commercialisation. Tom is also an author and regular speaker on transformational and strategic technology issues and developments.



Colette Mackenzie, Greg Kelly Law, Wellington

Colette has extensive experience in all aspects of trust law, advising clients on the use of trusts and wills in the context of asset planning, with particular expertise in dealing with attacks on the division of trust property.

SPEAKERS



Alice Nunn, North End Law, Hamilton

Alice is a director of North End Law Limited, a specialist property and private client firm. She is an experienced trust and estate lawyer whose practice is centered around advising on complex estate and trust matters.



Andrew Steele, Princes Chambers, Auckland

Andrew has over 30 years' experience in litigation in New Zealand and the United Kingdom. He was previously a partner at Chamberlains, then a partner at Martelli McKegg Lawyers from 2006 to October 2020, when he left to join the independent bar as a barrister sole specialising in trust and estate disputes. Andrew has presented seminars for NZLS CLE, ADLS, STEP, Legalwise and CCH in a variety of property, trust and estate-related topics and has written a number of articles on trust-related topics for the New Zealand Law Journal and other publications. He is the lecturer for and examiner of the estate litigation component for the STEP diploma.

CONTENTS

| | |
|---|-----------|
| TIKANGA & SUCCESSION: A CRITICAL ANALYSIS OF THE TE AKA MATUA O TE TURE LAW COMMISSION REPORT | 1 |
| INTRODUCTION | 3 |
| WHAT IS TIKANGA?..... | 4 |
| TIKANGA AND THE LAW | 6 |
| THE COMMISSION REPORT – RECOMMENDATIONS | 12 |
| THE COMMISSION REPORT – ANALYSIS | 15 |
| CONCLUSION..... | 17 |
| EXECUTOR DISPUTES | 19 |
| WHERE THERE’S A WILL THERE’S A WAR – BUT WHAT ARE THE EXECUTOR’S BATTLES TO FIGHT? | 21 |
| WHEN EXECUTORS LITIGATE – GENERAL PRINCIPLES..... | 21 |
| FAMILY PROTECTION AND TESTAMENTARY PROMISES..... | 23 |
| QUESTIONABLE TRANSACTIONS..... | 23 |
| UNDUE INFLUENCE | 24 |
| RECOVERING LOANS AND OTHER ADVANCES | 28 |
| AN EXECUTOR’S DUTIES AND OBLIGATIONS WITH RESPECT TO A RELATIONSHIP PROPERTY DIVISION..... | 31 |
| CONCLUSION..... | 34 |
| CAPACITY: A SYNOPSIS..... | 37 |
| CAPACITY – PRACTICAL INSIGHTS..... | 41 |
| CONTRACTING CAPACITY..... | 43 |
| WILL-MAKING CAPACITY | 44 |
| PROTECTION OF PERSONAL AND PROPERTY RIGHT ACT 1988 (PPPRA)..... | 54 |
| SUCCESSION PLANNING: HOW TO PREPARE FOR THE TRANSFER OF DIGITAL ASSETS..... | 63 |
| SUCCESSION PLANNING: HOW TO PREPARE FOR THE TRANSFER OF DIGITAL ASSETS, SUCH AS CRYPTOCURRENCY, NFTS AND SOCIAL MEDIA ASSETS TO BENEFICIARIES | 65 |
| WHAT ARE “DIGITAL ASSETS”?..... | 65 |
| WHAT IS THE LEGAL STATUS OF THESE INTANGIBLE ASSETS IN NEW ZEALAND? CAN I PASS THEM ON IN MY WILL? | 71 |
| WHAT ABOUT OTHER DIGITAL ITEMS | 74 |
| PRACTICALITIES OF TRANSFERRING THESE “ASSETS”..... | 75 |
| A FINAL THOUGHT | 76 |
| REFORMING SUCCESSION LAW – A NEW INHERITANCE ACT | 77 |
| INTRODUCTION | 79 |
| RELATIONSHIP PROPERTY ENTITLEMENTS..... | 80 |
| FAMILY PROTECTION CLAIMS | 82 |
| CONTRIBUTION CLAIMS | 84 |
| INTESTACY ENTITLEMENTS | 86 |
| AWARDS, PRIORITIES AND ANTI-AVOIDANCE | 89 |
| CONTRACTING OUT AND SETTLEMENT AGREEMENTS | 93 |
| JURISDICTION OF THE COURTS..... | 94 |
| RESOLVING DISPUTES IN COURT..... | 95 |
| RESOLVING DISPUTES OUT OF COURT | 96 |
| ROLE OF PERSONAL REPRESENTATIVES..... | 97 |
| UNRAVELLING COMPLICATED STRUCTURES – PARTNERSHIPS BEFORE AND AFTER DEATH | 99 |
| INTRODUCTION | 101 |
| PARTNERSHIP LAW..... | 102 |
| IDENTIFYING A PARTNERSHIP | 103 |
| PARTNERSHIP PROPERTY | 104 |
| DISSOLUTION OF A PARTNERSHIP ON DEATH | 105 |
| DEATH, PARTNERSHIPS AND PROPERTY RELATIONSHIPS ACT 1976 | 106 |

| | |
|---|-----|
| DISPOSING OF A PARTNERSHIP INTEREST OR PROPERTY IN A WILL | 107 |
| PARTNERSHIP IDENTIFIED AFTER DEATH | 108 |
| EXECUTORS AS PARTNERS..... | 108 |
| SUMMARY | 110 |