PRESENTERS



Sebastian Bisley, Thorndon Chambers, Wellington

Sebastian has over 20 years' experience as a commercial/public law barrister. He has appeared before all of New Zealand's courts as lead counsel, was Benchmark Litigation's Litigator of the Year in 2019, and is highly rated in most directories. Sebastian has a wide-ranging litigation practice, having advised and represented corporations, trustees, hedge funds, bondholders and individuals on complex litigation proceedings and regulatory investigations in New Zealand, and a number of off-shore jurisdictions.



Tim Smith, Thorndon Chambers, Wellington

A former partner at both Bell Gully and Luke Cunningham Cere, as well as a Crown counsel at Crown Law, Tim has appeared as counsel in a number of New Zealand's leading cases in the fields of public law, tort, contractual interpretation, energy, insolvency, tax, competition and litigation funding. He has appeared regularly in courts and tribunals in the United Kingdom, where he practised as a barrister in London, and as lead counsel at all levels of the New Zealand court system.

CONTENTS

1.	INTRODUCTION	1
2.	BATHURST RESOURCES LTD V L&M COAL HOLDINGS LTD – CONTRACTUAL INTERPRETATION AND IMPLIED TERMS	3
	ADMISSIBILITY OF PRE-CONTRACTUAL NEGOTIATIONS AND POST-CONTRACTUAL CONDUCT	
3.	WOOLLEY V FONTERRA CO-OPERATIVE GROUP LTD – CONTRACTUAL DISCRETIONS IN NEW ZEALAND	9
	CONTRACTUAL POWERS	11 12
	THE COURT OF APPEAL	
4.	PHILIPP V BARCLAYS BANK UK PLC – BANK'S DUTIES TO INSTRUCTIONS WHEN POTENTIALLY ON NOTICE OF FRAUD	17
	THE COURT'S REASONING	
5.	PGG WRIGHTSON REAL ESTATE LTD V ROUTHAN – DAMAGES FOR MISREPRESENTATION	21
	THE FACTS	
	THE LAW OF LOSS FOR MISREPRESENTATION THE COURT OF APPEAL CONCLUSION AND POINTS TO CONSIDER	25
6.	FRUCOR SUNTORY NEW ZEALAND LIMITED V COMMISSIONER OF INLAND REVENUE – TAX AVOIDANCE AND PARLIAMENT'S PURPOSE	27
	TAX AVOIDANCE – BEN NEVIS BEN NEVIS AS APPLIED IN FRUCOR	28
	Commentator viewThe Inland Revenue view	
7.	CLIENTEARTH V SHELL PLC - DIRECTORS' DUTIES AND CLIMATE CHANGE	33
	DERIVATIVE ACTIONS: IN ENGLAND AND NEW ZEALAND	36 36
	YAN V MAINZEAL PROPERTY AND CONSTRUCTION LIMITED (IN LIQUIDATION) – DIRECTORS DUTIES WHEN A COMPANY IS FACING INSOLVENCY	41