

PRESENTERS



Brendan Lyne, Lyne Davis Opinion Ltd., Auckland

BCom, MBA (distn), MBS (Finance), AAMINZ, CA, CMA, CSAP

Brendan is a director and principal of Lyne Davis Opinion with more than 30 years' accounting and corporate finance experience. A significant portion of his time is spent on relationship property expert opinions including business and share valuations, economic disparity, bundle of rights and evidence in respect of trusts. Brendan is an experienced expert witness and has been appointed by the courts and NZICA as such. He also provides expert evidence in the areas of economic damages assessments, forensic accounting, valuation and other financial matters. He has regularly appeared as an expert witness in the High Court, Family Court and other tribunals. He has been involved in many of the most recent significant cases including the expert for Mrs Clayton in *Clayton v Clayton*.



Robyn von Keisenberg, Wyndham Chambers, Auckland

Robyn is a family law specialist with over 30 years' experience. She has developed a broad practice with special interest in Care of Children Act proceedings, relationship property including Trust issues, Family Protection Act and other Estate Litigation, Mental Health Act proceedings, Protection of Personal Property Rights Act and other related elder law issues.

Robyn has represented children in trust disputes (including in the seminal decision *X v X*) and for children in High Court Estate litigation. She is a Deputy Convenor on the Mental Health Review Tribunal. Robyn is currently a committee member of the Medico-Legal Society.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

Cover and text stocks used in this publication are from Forestry Stewardship Council certified mills, manufactured under the environmentally responsible paper manufactured environmental management system ISO 14001, using pulp from well managed forests and other controlled sources.

CONTENTS

1. INTRODUCTION.....	1
2. DEMYSTIFYING FINANCIAL STATEMENTS	3
INTRODUCTION.....	3
BASIC UNDERSTANDING OF FINANCIAL STATEMENTS	3
REVIEWING AND READING A SET OF FINANCIAL STATEMENTS	6
<i>General observations</i>	6
<i>Income statement</i>	7
<i>Balance sheet</i>	9
THINGS TO LOOK FOR WHEN REVIEWING A BALANCE SHEET	10
CONCLUSION	11
3. CASE STUDY 1 – LITTLE KIDS CHILDCARE LIMITED	13
BACKGROUND.....	13
EXERCISE 1	26
<i>Questions:</i>	26
4. VALUATION THEORY AND PRINCIPLES	27
OVERVIEW	27
KEY QUESTIONS TO BE ANSWERED IN ANY VALUATION	27
VALUATION SUBJECT – THE “WHAT?”	28
DATE OF VALUATION – THE “WHEN?”	28
VALUATION PURPOSE – THE “WHY?”.....	29
<i>Pountney v Pountney CA45/91, 20 September 1991</i>	30
<i>Hatrick v Commissioner of Inland Revenue [1963] NZLR 641</i>	30
<i>Z v Z (No 1) [1989] 3 NZLR 413</i>	31
<i>Wilkinson v Wilkinson [1991] 8 FRNZ 1</i>	31
<i>Newman v Newman [1999] NZFLR 839, (1999) 18 FRNZ 413</i>	31
<i>Gilfoyle v Gilfoyle (HC, Auckland AP 32-SW01, 3 September 2001, Laurenson J)</i>	31
<i>Z v Z (No 2) [1997] 2 NZLR 258</i>	31
STANDARDS OF VALUE.....	32
FAIR MARKET VALUE	32
FAIR VALUE.....	33
CONCLUSION	33
TIME VALUE OF MONEY	34
VALUATION METHODS	35
<i>Figure 1: Valuation methodologies</i>	35
COMPONENTS OF VALUE (THE VALUATION EQUATION).....	36
<i>Figure 2: Enterprise value and company value</i>	36
VALUATION METHODOLOGY – INCOME-BASED APPROACH	36
<i>Discounted cash flows</i>	36
<i>Figure 3: DCF Example:</i>	37
CAPITALISATION OF EARNINGS	37
<i>Figure 4: Example of earnings used in a capitalisation of earnings:</i>	39
<i>Figure 5: Capitalisation of earnings example:</i>	39
VALUATION METHODOLOGY – ASSET-BASED APPROACH.....	40
<i>Net assets valuation – re-valued assets</i>	40
<i>Notional liquidation</i>	40
VALUATION METHODOLOGY – COMPARATIVE VALUATIONS.....	41
<i>Market comparisons with actual transactions</i>	41
<i>Rules of thumb</i>	41
WHEN ARE DIFFERENT VALUATION METHODS USED?.....	42
<i>Figure 6: When various valuation methodologies tend to be used:</i>	42
5. APPLYING VALUATION PRINCIPLES	43
IS A COMPANY OR BUSINESS WORTH VALUING?	43
STEPS IN ASSESSING WHETHER A BUSINESS IS WORTH VALUING	43
EXERCISE 2	44

<i>Is Little Kids worth valuing?</i>	44
<i>Exercises</i>	44
6. CASE STUDY 2 – HEALTHY MEDICAL LTD	45
EARNINGS-BASED VALUATION	45
BACKGROUND	45
EXERCISE 3	47
<i>Earnings-based valuation</i>	47
EXERCISE 4	48
<i>Earnings-based valuation</i>	48
<i>Normalisation adjustments</i>	48
<i>Required</i>	49
<i>Table 1</i>	49
EXERCISE 5	50
<i>Earnings-based valuation</i>	50
<i>Surplus assets</i>	50
<i>Interest-bearing debt</i>	50
<i>Additional information</i>	50
<i>Exercise</i>	50
<i>Table 2</i>	51
<i>Table 3</i>	51
<i>Table 4</i>	51
EXERCISE 6	52
<i>Earnings-based valuation</i>	52
<i>Value of Healthy Medical shares</i>	52
<i>Table 5</i>	53
<i>Discussion point</i>	53
EXERCISE 7	54
<i>Earnings-based valuation</i>	54
<i>Table 6</i>	54
<i>Discussion point</i>	54
7. ECONOMIC DISPARITY	55
DATE OF ASSESSMENT	56
“SIGNIFICANT” DISPARITY	56
“INCOME”	56
“LIVING STANDARDS”	56
ONUS OF PROOF	57
CAUSATION	57
DISCRETION	58
QUANTUM	58
<i>Figure 7:</i>	61
STEPS IN CALCULATING ECONOMIC DISPARITY (BASED ON THE APPROACH IN <i>X v X</i> ADOPTED BY THE COURT OF APPEAL): “BUT FOR” DISPARITY	62
<i>Steps</i>	62
COMMENTARY	63
8. VALUATION OF TRUSTS	65
INTRODUCTION	65
VALUATION OF TRUSTS	65
<i>Property rights in a trust</i>	68
<i>Valuation approach</i>	70
ADDITIONAL MECHANISMS FOR OVERCOMING THE USE OF TRUSTS	70
CLAIMS UNDER S 182	71
<i>Tention between section 44, section 44C and section 182</i>	72
<i>Valuing the interest</i>	73
9. MISCELLANEOUS VALUATION ISSUES	75
SECTION 9A – WHEN SEPARATE PROPERTY BECOMES RELATIONSHIP PROPERTY	75
SECTION 9A(1)	75
SECTION 9A(2)	77
<i>ROSE v ROSE</i>	78

SECTION 18B COMPENSATION FOR CONTRIBUTIONS MADE AFTER SEPARATION	79
10. HOW TO TRACE ASSETS	83
INTRODUCTION.....	83
CONCLUSION	84
11. OBTAINING THE BEST OF YOUR EXPERT	85
CHOOSING AN EXPERT	85
FEES AND COSTS.....	86
MANAGING YOUR EXPERT.....	87
CROSS EXAMINATION.....	88
<i>Preparing for cross-examination</i>	88
AREAS FOR CROSS-EXAMINATION	88
12. WHY VALUERS DISAGREE AND STRATEGIES TO DEAL WITH THIS SITUATION	91
WHY VALUERS MAY DISAGREE.....	91
STRATEGIES FOR DEALING WITH DISAGREEMENT BETWEEN VALUERS	92
13. APPENDIX 1.....	93
9.43 EXPERT WITNESS TO COMPLY WITH CODE OF CONDUCT.....	93
9.44 COURT MAY DIRECT CONFERENCE OF EXPERT WITNESSES	93
9.45 STATUS OF JOINT WITNESS STATEMENT BY EXPERT WITNESSES.....	93
SCHEDULE 4.....	94
<i>Code of conduct for expert witnesses</i>	94
14. BIBLIOGRAPHY	97
15. REFERENCES.....	99
16. SOLUTIONS TO EXERCISES	101
EXERCISE 1 – REVIEW OF FINANCIAL STATEMENTS.....	101
<i>General observations</i>	101
<i>What do you notice when looking at the Income Statement?</i>	101
<i>When you review the Balance sheet, consider the following</i>	102
EXERCISE 2 – IS LITTLE KIDS WORTH VALUING?.....	103
<i>Business value – is there value in this business?</i>	103
<i>The total return to owners for each period</i>	103
EXERCISE 3 – EARNINGS-BASED VALUATION	104
<i>What is being valued?</i>	104
<i>What is the date of the valuation?</i>	104
<i>What is the purpose of the valuation?</i>	104
<i>What is the appropriate standard of value?</i>	104
<i>Is the business worth valuing?</i>	104
EXERCISE 4 – EARNINGS-BASED VALUATION	105
<i>Table 1</i>	105
EXERCISE 5 – EARNINGS-BASED VALUATION.....	106
<i>Table 2</i>	106
<i>Table 3</i>	106
<i>Table 4</i>	106
EXERCISE 6 – EARNINGS-BASED VALUATION	107
<i>Table 5</i>	107
<i>Discussion point</i>	107
EXERCISE 7 – EARNINGS-BASED VALUATION	108
<i>Table 6</i>	108
<i>Discussion point</i>	108