

Law for Spatial Designers

Introduction – the structure of the topic

- Lecture 1 Introduction and selecting a business unit.
- Lecture 2 Introduction to the law of contract
- Lecture 3 Intellectual property – an outline, Introduction to risk management.

Lecture 1

- **Introduction and**
- **selecting a business unit.**

Introduction law and ethics.

The nature of law

The problem

The word "law" is a familiar one in very day speech

the meaning it conveys depends on the context in which it is used and the perception of the listener or reader

the study of law and the law itself depends on the accurate use of language to express meaning

within this word of one syllable there is a complex variety of ideas and meanings for which the word may be properly be used as a descriptor

As St Augustine of Hippo said of "time":

"What then is time? If no one asks me I know: if I wish to explain it to one that asks, then I know not."

Identifying the law

While much of the law can be described as rules

Not all rules are rules of law.

From the Laws of Table Tennis

2.7 A GOOD RETURN

2.7.1 The ball, having been served or returned, shall be struck so that it passes over or around the net assembly and touches the opponent's court, either directly or after touching the net assembly.

Compare with

Every one commits theft if he or she kills any animal that is the **property** of any other **person** with intent to steal the carcass, skin, or plumage, or any other part, of the animal.

Which of these two rules are rules of law?

Why?

A rule that has been made by an Act of the Parliament of New Zealand or under a power conferred by and Act of the New Zealand Parliament is law in New Zealand.

But in New Zealand it also the case that:

A principle that has been stated to be law by a judge or judges in the course of deciding a case is also part of the law of New Zealand.

The Customer

The key areas of law are:

The law of contract, including credit privacy

the significant legislation includes:

Consumer Guarantees Act 1993

Sale of Goods Act 1908

Fair Trading Act 1986

Door to Door Sales Act 1967

Auctioneers Act 1928

Layby Sales Act 1971

Weights & Measures Act 1987

Unsolicited Goods and Services Act 1975

Credit Contracts and Consumer Finance Act 2003

Credit (Repossession) Act 1997

Personal Property Securities Act 1999

Privacy Act 1993

Health & Safety in Employment Act 1992

The Supplier**The key areas of law are:**

The law of contract, the law of personal property, and the significant legislation includes:

the significant legislation includes:

*Contractual Remedies Act 1979
Sale of Goods Act 1908
Fair Trading Act 1986
Credit Contracts and Consumer Finance Act 2003
Personal Property Securities Act 1999
Privacy Act 1993*

Employees**The key areas of law are:**

Contract, employment, human rights, safety and revenue

the significant legislation includes:

*Employment Relations Act 2000
Equal Pay Act 1972
The Holidays Act 2003
Minimum Wage Act 1983
Parental Leave and Employment Protection Act 1987
Wages Protection Act 1983
Accident Compensation Act 2001
Health and Safety in Employment Act 1992
Human Rights Act 1993
Income Tax Act 2007*

Competitors**The key areas of law are:**

- *Competition law*
- *fair trading*
- *intellectual property*

the significant legislation includes:

*Fair Trading Act 1986
Commerce Act 1986
Copyright Act 1994
Patents Act 1953
Trademarks Act 2002*

The Environment**The key legislation includes**Centrally administered legislation

- *Climate Change Response Act 2002*
- *The Conservation Act 1987*
- *The Marine Pollution Act 1974*
- *The Marine Mammals Protection Act 1978*
- *The Maritime Transport Act 1994*

Locally administered legislation

- *The Resource Management Act 1991*
- *The Building Act 2004*

Tangata whenua

Treaty issues are an increasingly important branch of the law.

The statutes which bear on this include:

Treaty of Waitangi Act 1975

Conservation Act 1987

Te Ture Te Reo Maori (Maori Language Act) 1987

Resource Management Act 1991

Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

Te Ture Whenua Maori (Maori Land Act) 1993

Fisheries Act 1996

Trade Marks Act 2002

Marine and Coastal Area (Takutai Moana) Act 2011

Wai 262 – Report of the Waitangi Tribunal on claims re the intellectual property of the Māori people.

The report of the Waitangi Tribunal on the WAI 262 claim

The claim covered 3 areas

1. Mātauranga Māori
2. Taonga works
3. Taonga species

Conclusions

Whether the work in question is a taonga work or a taonga-derived work, Māori are entitled to prevent offensive and derogatory public uses of it.

If the work in question is a taonga work, then the kaitiakitanga relationship that comes with it justifies more extensive rights in Treaty terms. These would include the right to be consulted and, where appropriate, to give consent to the commercial use of such works.

Māori are also entitled to prevent offensive and derogatory public uses of mātauranga Māori.

Law & Ethics

Law and ethics

Legal standards are usually objective

Unconscionable bargain
overreaching – taking an unfair advantage

Dubious, an spatial designer visits Bill and Betty Pathetic, who are elderly neighbours, and persuades them that their property really could do with a "facelift" and that in allowing Dubious to redesign and redecorate the property would add "tens of thousands" to the value of the property. Bill and Betty have been retired for some years and have lost touch with the business world and property values in particular, and so Dubious is able to persuade them to sign a cost+ agreement. After some 2 months of incredible inconvenience and upheaval the job is finished and Dubious presents his bill for \$25,000. Bill and Betty are really upset as they had no idea it would cost so much, they do not like the new look, and the age, style and location of their property mean that there is no real increase in the value of property resulting from the redecoration.

Ethics and Morals

Ethics are defined as " a system of accepted beliefs which control behaviour, esp. such a system based on morals'

Morality is defined as 'a personal or social set of standards for good or bad behaviour and character, or the quality of being right, honest or acceptable.'

Internal and external ethical standards

Ethical standards may be **internal**:

‘Do I feel good about doing or not doing this?’

or they may be **external**

‘What will people think if they discover I done or not done this?’

Law and ethics for designers – the DINZ code of ethics

Introduction

Compliance

Responsibility to the public

Responsibility to clients

Conflicts of interest.

Devious, is a real estate agent. Credulous employs her to sell a house on Credulous's behalf. As part of the service Devious recommends the price at which to offer the house which is \$200,000. Devious approached Credulous with an offer from Slither to purchase for \$190,000. On the advice of Devious that this is best price they are likely to get, Credulous accepts the offer and Devious receives the appropriate commission. Credulous then discovers that Slither had promised Devious \$5,000 if she could persuade Credulous to accept the offer of \$190,000. This would be a secret commission and both Devious and Slither would have committed an offence under the Secret Commissions Act.

Responsibility to other designers

Responsibility to the profession

Selecting the form of Business Organization

The Sole Trader

The sole trader

- The owner is trading on their own account.
- The sole trader is the legal owner of all the assets of the business.
- The sole trader can sue and be sued in their own name.
- The profits of the business are the personal income of the sole trader for tax purposes.
- The sole trader is personally liable for all the debts of the business.
- There is no distinction between the assets of the business and the personal assets of the sole trader.

The advantages of being a sole trader

- Simplicity of formation.
- Reduced compliance costs in operation.
- Closing down the business is a simple process.
- The sole trader does not have to rely on partners or fellow directors to be competent and honest.
- The sole trader is their own boss.

The disadvantages of being a sole trader

- The lack of protection for personal assets in event of the business failing.
- Difficulty in raising finance except by mortgaging or charging personal assets.
- The sole trader is "on his/her own" and could lack support.
- Limited ability to expand should the business prove successful.

The Partnership

The partnership

- * The relationship which subsists between persons carrying on a business in common with a view to profit.
- * The partnership may sue and be sued in the name of the partnership.
- * The partners are personally liable for all partnership debts.
- * The partnership assets and liabilities are distinguished from those the partners for accounting purposes.
- * The partnership is liable for the actions of partners in contract and in tort.

The advantages of a partnership

- * The partners can provide mutual support and assistance.
- * There are no formalities required for the formation of a partnership.
- * For some professions where limited liability is not an option the partnership is the only alternative to a sole trader.

The disadvantages of a partnership

- * The partners remain personally liable for the debts of the partnership.
- * The partnership and the partners can be destroyed by dishonesty or incompetence of one of the partners.
- * Compared with the sole trader the partner is not their own boss.
- * The interest in the partnership is not easily realisable.

The Limited partnership

Introduction This is a partnership formed under the Limited Partnership Act 2008

Formation Greater formality is required. There must be a written partnership agreement under s9 with the minimum contents specified in s10

Legal Personality Under s11 the limited partnership is a separate legal person distinct from the general partners and the limited partners.

Legal Implications for the Limited and Managing Partners

- Under s31 limited partners who do not participate in the management of the limited partnership are not liable for the debts and liabilities of the limited partnership.
- The liability of the general partners is unlimited.
- If the limited partners take any part in the business of the firm, they become liable as general partners under s30.

The Registered Company

The registered company

- ▶ Companies are created by registration under the Companies Act 1993.
- ▶ A company must have
 - ▶ one or more shareholders;
 - ▶ one or more directors.
- ▶ A registered company is a legal person separate and distinct from that of its shareholders, thus:
 - ▶ The assets of the company do not belong to the shareholders.
 - ▶ The debts of the company cannot be recovered directly from the shareholders.
- ▶ Unless its constitution provides otherwise the liability of shareholders is limited the amount they have subscribed, or agreed to subscribe, for their shares.

The advantages of the registered company
for the small business operation

- ▶ Limited liability gives the shareholders protection for their personal assets.
- ▶ Although there is no real reason why it should be so, raising of finance may be easier for a company than for an unincorporated business.
- ▶ Shares in a company are easier to issue and transfer so that
 - ▶ Fresh capital is easier to raise;
 - ▶ A shareholder's interest is more easily realised.
- ▶ The company structure provides a more effective platform for expansion.

The disadvantages of the registered company
for the small business operation

- ▶ Formalities and costs relating to formation.
- ▶ Increased compliance costs in operation.
- ▶ Significant formalities and costs in winding up a company.
- ▶ Susceptible to loss of control through transfers of shares.
- ▶ The director or directors are accountable for their actions to:
 - ▶ The shareholders;
 - ▶ The Registrar of Companies;
 - ▶ The liquidator.

Qualifying companies

This distinction belongs not to company law but to taxation law.
 Under s OB3 of the Income Tax Act 2004 this is a company that is:

- a New Zealand company not a foreign company **and**
- has no more than 5 shareholders or is a flat-owning company **and**
- does not derive more than \$10,000 from foreign income excluding dividends and after allowing for certain deductions **and**
- has elected to become a qualifying company with the agreement of all directors and shareholders.

**Other
Organizations**

The incorporated society

1. Incorporated by registration.
2. Minimum of 15 members.
3. Cannot make a profit for its members.
4. Can only act in accordance with its rules, i.e.
 - i. Can only do those things which for purposes specified in its rules;
 - ii. Can only make contracts in the manner prescribed by its rules.
5. Generally used for sporting, cultural and social purposes and for trade unions.
