

## PRESENTERS



### **Helen Dervan, AUT University , Auckland**

Helen holds a BCL from the University of Oxford and is a specialist in equity and trusts and their role in commercial litigation. She is a senior lecturer at AUT University and teaches courses in commercial equity, property law and civil litigation. Helen worked at Russell McVeagh in Auckland and Herbert Smith in London, specialising in banking, international finance and general chancery litigation.



### **Jeremy Johnson, Wynn Williams, Christchurch**

Jeremy is a partner in the Wynn Williams Litigation & Dispute Resolution team. He is an accomplished litigator, specialising in commercial, equity and trust law. Jeremy has been involved in numerous trust cases in his career, including *Kain v Hutton*, and more recently he has acted for the Church Property Trustees in Christchurch in relation to matters arising from the earthquakes. He has an LLM from Gonville & Caius College at the University of Cambridge, where his studies included a focus on commercial equity.

*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

<b>1. INTRODUCTION</b> .....	<b>1</b>
<b>2. WHAT IS A TRUST?</b> .....	<b>3</b>
<b>3. WHAT ARE THE FUNDAMENTAL DUTIES OF A TRUSTEE?</b> .....	<b>7</b>
<b>4. MINIMISING RISKS FOR TRUSTEES – LESSONS FROM RECENT CASE LAW</b> .....	<b>11</b>
<b>5. TRUSTEE CONTRACTING</b> .....	<b>23</b>
INTRODUCTION .....	23
<b>6. TRUSTEES AND THIRD PARTIES</b> .....	<b>25</b>
INTRODUCTION .....	25
LIMITING LIABILITY – RIGHTS OF INDEMNITY AND RECOUPMENT .....	25
LIMITING LIABILITY – LIMITATION CLAUSES .....	26
LIMITING LIABILITY – THE CORPORATE TRUSTEE .....	27
ENFORCEMENT BY THIRD PARTIES AGAINST TRUSTEES CONTRACTING .....	28
TRUSTEES' RIGHT TO INDEMNITY .....	29
THE IMPORTANCE OF THE RIGHT TO INDEMNITY AND SUBROGATION .....	32
CONCLUSION .....	33
<b>7. TRUSTEES AGAINST THIRD PARTIES</b> .....	<b>35</b>
BENEFICIARIES AND THIRD PARTIES.....	35
<b>8. LIMITATION OF LIABILITY BY TRUSTEES</b> .....	<b>39</b>
INTRODUCTION .....	39
THE CORPORATE TRUSTEE .....	39
TRUSTEE EXEMPTION CLAUSES .....	40
SECTION 73 OF THE TRUSTEE ACT 1956 .....	43
<b>9. REMOVAL OF TRUSTEES</b> .....	<b>45</b>
INTRODUCTION .....	45
RECENT CASE LAW.....	45
CONCLUSION .....	49
<b>10. TRUSTEES OF CHARITABLE TRUSTS</b> .....	<b>51</b>