

Personhood: A Legal Tool for Furthering Māori Aspirations for Land

MEGAN EXTON

A dissertation submitted in partial fulfilment of the requirements of the degree of Bachelor of Laws
(Honours) at the University of Otago

October 2017

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	4
INTRODUCTION.....	5
CHAPTER ONE: LEGAL PERSONALITY	7
I - The Concept of Legal Personality	7
II - Sources of Legal Personality.....	8
III - The Rights and Duties of Legal Persons.....	11
A - Rights and Duties as the Defining Criteria	11
B - Variance in Rights and Duties.....	12
C - Purpose of Legal Personality	14
D - Christopher Stone and the Meaning of Legal Rights	15
IV - Universal Principles of Legal Personality	16
A - The New Zealand Bill of Rights Act 1990	17
V - Conclusion.....	17
CHAPTER TWO: MĀORI ASPIRATIONS AND LEGAL PERSONALITY	19
I - Explaining Māori Rights to Land.....	19
II - Māori Aspirations for Land Ownership	20
A - The Western Worldview	21
B - The Māori Worldview.....	21
III - Te Urewera Act 2014.....	25
IV - The Te Urewera Act 2014 and Māori Aspirations.....	26
A - Kaitiakitanga.....	26
B - Rangatiratanga	27
C - Concluding Comments	29
V - Conclusion	30
CHAPTER THREE: LEGAL PERSONALITY AS A LAND OWNERSHIP MODEL	31
I - Background to Treaty Settlements.....	31
II - Legal Personality as a Land Ownership Model.....	33
A - Legal Personality and the Māori Worldview	34
B - Legal Personality as a Compromise.....	36
C - Legal Personality and the New Zealand Bill of Rights Act 1990	37
D - Legal Personality and the Ability to Assert Rights	38
III - Comparison to Existing Land Ownership Models.....	38

A - Customary Title	38
B - Fee Simple Title	40
IV - Conclusion	41
CHAPTER FOUR: LEGAL PERSONALITY IN THE COURTS	42
I - Vicarious Liability.....	43
II - Direct Liability.....	44
A - Directing Mind and Will	44
B - Departure from the Directing Mind and Will Doctrine	46
III - Criminal Prosecution	47
IV - Tortious Liability.....	49
A - Trespass.....	50
B - Rylands v Fletcher	51
V - Compensation	54
VI - Conclusion.....	55
CONCLUSION.....	56
BIBLIOGRAPHY	58

ACKNOWLEDGEMENTS

I would like to thank my supervisor Professor Jacinta Ruru for inspiring me with your wisdom, energy and passion.

Thank you Brendan for tolerating me.

Finally, I would like to thank my family for your advice, support and belief in me over the course of this dissertation (and the last 22 years). I am very grateful for everything you have done for me and I think it's about time I put it in writing.

INTRODUCTION

“Te Urewera is ancient and enduring, a fortress of nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty... Te Urewera is a place of spiritual value, with its own mana and mauri ...Te Urewera has an identity in and of itself, inspiring people to commit to its care ... For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe ... For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland ... Te Urewera expresses and gives meaning to Tūhoe culture, language, customs, and identity. There Tūhoe hold mana by ahikāroa; they are tangata whenua and kaitiaki of Te Urewera.”¹

These words are taken from the Te Urewera Act 2014, a revolutionary piece of legislation that made Te Urewera a legal person.² Te Urewera, once a National Park, is an area of land in the North Island comprising lakes, forests and mountains.³ It is popular amongst hikers, with the Lake Waikaremoana Track being one of New Zealand’s “Great Walks”.⁴ It is also a remote haven for native forest birds, including the kiwi, kokako, kaka, and falcon.⁵ Importantly, it has been home to the Tūhoe people for centuries.⁶ Tūhoe ‘the Children of the Mist’ have a deep connection with Te Urewera.⁷ To Tūhoe, “Te Urewera is of Papatuanuku and together with her siblings make up our nature and universe; she is the the creator of all life.”⁸ Regarded as an ancestor, Te Urewera has its own identity, a distinct life.⁹ Legal personality recognises this, and liberates Te Urewera

¹ Te Urewera Act 2014, s 3.

² Section 11(1); and Jacinta Ruru “Tūhoe-Crown settlement – Te Urewera Act 2014” (2014) October Māori LR <[Māorilawreview.co.nz](http://maorilawreview.co.nz)>.

³ Ngai Tuhoe “Map of Te Urewera” <www.ngaituhoe.iwi.nz>; and Tourism New Zealand “Te Urewera” 100% Pure New Zealand <www.newzealand.com>.

⁴ Tourism New Zealand, above n 3.

⁵ Tourism New Zealand, above n 3; and Department of Conservation “Te Urewera: Nature and Conservation” <<http://www.doc.govt.nz>>.

⁶ Tourism New Zealand, above n 3; and Department of Conservation, above n 5.

⁷ Tourism New Zealand, above n 3; and Department of Conservation, above n 5.

⁸ Te Kawa o Te Urewera (The Te Urewera Management plan) 2017 at (accessed at <www.ngaituhoe.iwi.nz>) at 21.

⁹ Te Kawa o Te Urewera, above n 8, at 24.

from western notions of property ownership.¹⁰ Personhood is a “clear and innovative way to recognise Tūhoe’s link to Te Urewera”.¹¹

Considering this revolutionary development in the law, this dissertation will explore how legal personality can be used to further Māori aspirations for land ownership. The goal of this dissertation is to explore how personified land could operate generally. However, Te Urewera will be drawn upon as an example throughout this dissertation, as it is the only area of land in Aotearoa New Zealand that has been recognised as having personality. Whilst Te Awa Tupua (the face of the Whanganui River) has also been recognised as a legal person,¹² this dissertation will focus upon the personification of land rather than rivers.

Chapter One will evaluate what it means to become a legal person. For, if we are to understand how land will operate as a legal person, the fundamental nature of personhood must be understood. Chapter Two will explore how the Te Urewera Act 2014 serves to fulfil Māori aspirations for land ownership. Whilst many of the statutory provisions could operate independently to Te Urewera acquiring personhood, it is important to evaluate the statutory framework because future legal persons are likely to be created in a similar manner. Legal personhood itself is the focus of Chapter Three. This chapter will discuss what the legal personification of land itself can achieve for Māori, including alignment with the Māori worldview. Finally, Chapter Four will investigate how personified land could be party to proceedings. As legal persons can sue, be sued, and be subject to criminal prosecution, it is important to evaluate how this could apply to personified land.

¹⁰ Te Kawa o Te Urewera, above n 8, at 24.

¹¹ (23 July 2014) 700 NZPD 19477.

¹² Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, ss 12 - 14.

CHAPTER ONE: LEGAL PERSONALITY

Legal systems are peopled by both natural persons and artificial legal persons.¹³ This dissertation examines how the legal personification of land in Aotearoa New Zealand can further and protect Māori interests. To determine how land will operate as a legal person, the fundamental nature of legal personhood must be examined. This chapter will first explain the concept of legal personhood. I will then examine the sources of legal personality and consider whether this would have any impact on the legal personification of land. Following this, I will examine what it means to be a legal person and a rights holder before finally considering whether there exist any other universal principles that apply to legal persons.

I - The Concept of Legal Personality

Legal persons are artificial creations of law, being any non-human entity that the law attributes personality.¹⁴ Legal personhood is not a novel concept; it is well accepted in common law jurisdictions, especially for enabling companies to be legal persons.¹⁵ It is a fundamental principle of law that legal reference to a person is not just to natural persons, but to an entity that possesses legal personality.¹⁶ There are many other examples of legal persons across common law jurisdictions, including: the Crown;¹⁷ ships;¹⁸ Hindu Idols;¹⁹ limited partnerships;²⁰ local

¹³ HAJ Ford and RP Austin *Ford and Austin's Principles of Corporations Law* (7th ed, Butterworths, Australia, 1995) at 27.

¹⁴ Glanville Williams *Salmond on Jurisprudence* (11th ed, Sweet & Maxwell, London, 1957) at 357; and *Miglani v State of Uttarakhand* HC Uttarakhand Writ Petition (PIL) No.140 of 2015, March 30 2017 at 63.

¹⁵ See *Trevor Ivory Ltd v Anderson* [1992] 2 NZLR 517 (CA) at 520; *Steel & Tube Holdings Ltd v Lewis Holdings Ltd* [2016] NZCA 366, (2016) 11 NZCLC 98-045 at 21; *Salomon v A Salomon & Co Ltd* [1897] AC 22 (HL) at 30, 42 and 56; *Lee v Lee's Air Farming Limited* [1961] NZLR 325 (PC) at 333; and *Company Law* (online looseleaf ed, Thomson Reuters NZ) at [CA15.01].

¹⁶ Daniel Greenberg (ed) *Jowitt's Dictionary of English Law* (3rd ed, Sweet & Maxwell, London, 2010) at 1699.

¹⁷ Janet McLean "The Crown in Contract and Administrative Law" (2004) 24 OJLS 129 at 136.

¹⁸ Christopher Stone "Should Trees Have Standing? – Toward Legal Rights for Natural Objects" (1972) 45 S Cal L Rev 450 at 452; see *United States v The Little Charles* 26 F Cas 979 (CCD Va 1818); and see *The Malek Adhel* 43 US 210 (1844).

¹⁹ *Salim v State of Uttarakhand* HC Uttarakhand Writ Petition (PIL) No.126 of 2014, March 20 2017 at 5 - 6; SM Solaiman "Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy" [2017] 2 AI&L 156 at 157; and Williams, above n 14, at 350.

²⁰ Limited Partnerships Act 2008, s 11.

authorities;²¹ statutory entities (including Accident Compensation Corporation, District Health Boards, WorkSafe New Zealand);²² and recently, rivers and land.²³ Despite existing numerous legal persons, the meaning of “personality” can nevertheless be unclear. The word “persons’ may connote personal identity like that of natural persons, a perspective that some judges have endorsed.²⁴ For example, according to Denning LJ, a company can be likened to a human body: it “has a brain and a nerve centre which controls what it does. It also has hands which hold the tools”.²⁵ However, as will be discussed, most theorists agree that legal personality can be equated to being capable of rights and duties. As will be analysed in this chapter, the rights and duties possessed by legal persons are not necessarily the same as those of natural persons, and can also vary between legal persons. Rather than there being a definitive list of rights and duties that are acquired by an entity upon being declared a legal person; with legal persons being an artificial creation of law, these can be dictated by the lawmaker. An essential question then follows: what does legal personhood entail?

II - Sources of Legal Personality

Legal persons are artificial creations of law and can be created by the judiciary, specific legislation, or by general legislation.²⁶ I will draw upon the following examples of legal persons to explain the difference between these three sources: Te Urewera and Te Awa Tupua; companies and limited partnerships; and an Indian ecosystem. In New Zealand, land has only been declared a legal person once by specific legislation, the Te Urewera Act 2014. Should Te Urewera prove successful, the New Zealand Parliament could consider enacting general legislation that would

²¹ Neil Campbell “Corporate Personality” in Peter Watts, Neil Campbell and Christopher Hare *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016) 23 at 26.

²² Crown Entities Act 2004, ss 7(1)(a) and 15(b), and sch 1.

²³ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1); Te Urewera Act 2014, s 11(1); and *Miglani v State of Uttarakhand*, above n 14, at 64.

²⁴ Ford and Austin, above n 13, at 34.

²⁵ *HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159 (CA) at 172 as cited in Ford and Austin, above n 13, at 34; Campbell, above n 21, at 33; and *Lee v Lee's Air Farming Limited* [1959] NZLR 393 (CA) at 398.

²⁶ Ford and Austin, above n 13, at 27.

allow different areas of land to be created by registration. This would allow much more areas of land to be personified.

There is a difference between creating legal persons by specific legislation and creating them by general legislation. Neil Campbell in “Company Law in New Zealand” refers to these different sources as a “specific incorporation Act” and a “general incorporation Act”, respectively.²⁷ Te Urewera (land) and Te Awa Tupua (a river) are legal persons of the natural world created by specific legislation. Created by the Te Urewera Act 2014, “Te Urewera is a legal entity, and has all the rights, powers, duties and liabilities of a legal person”.²⁸ Similarly, Te Awa Tupua (the Whanganui river) was declared a legal person under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.²⁹ Conversely, the meaning of general legislation can be explained by considering corporate entities. In New Zealand, incorporated companies and limited partnerships are given legal personality pursuant to general pieces of legislation: the Companies Act 1993 and Limited Partnerships Act 2008.³⁰ The registration of such entities pursuant to these general pieces of legislation creates the legal person.³¹ As long as the criteria for registration is satisfied, people can create as many of these legal persons as they wish.³² Given this simple mechanism, these forms of legal personality are a common phenomenon; as of August 2017 there are 586,325 New Zealand Limited Companies.³³ Conversely, there is no equivalent statute allowing people to create personified areas of land or water under general legislation; Te Urewera and Te Awa Tupua are the only nature-based legal persons in New Zealand. In both examples, the legal persons are identified by specific legislation.³⁴

Creating land-based legal persons pursuant to general legislation could allow unspecified areas of land to become legal persons. Perhaps one general piece of legislation could be enacted

²⁷ Campbell, above n 21, at 26 – 27.

²⁸ Section 11(1).

²⁹ Section 14(1).

³⁰ Companies Act 1993, s 15; Limited Partnerships Act 2008, s 11.

³¹ Companies Act 1993, ss 13, 14 and 15; Limited Partnerships Act 2008, ss 6, 7, and 11; and Campbell, above n 21, at 27.

³² Companies Act 1993, ss 11, 12, 13; Limited Partnerships Act 2008, ss 8, 9, 10, 51, 52, and 53; and Campbell, above n 21, at 27.

³³ Companies Office “Register statistics” (16 August 2017) <www.companiesoffice.govt.nz>.

³⁴ Te Urewera Act 2014, s 11(1); and Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1).

that allows Māori to register their land as its own legal person. The personification of land aligns with the traditional Māori worldview of land ownership; land is ancestral rather than property to be owned.³⁵ Iwi may wish to establish their own governing board and then register iwi-owned land as a legal person. Numerous legal persons could then be created in reliance upon one general piece of legislation. This proposal may seem inconceivable. However, as stated by Christopher Stone: “throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable.”³⁶ It wasn’t until the mid-nineteenth century that companies could be incorporated through registration pursuant to general legislation.³⁷ Prior to that time, business people wishing to incorporate companies were forced to either request that the sovereign grant a royal charter or lobby Parliament to create specific legislation. It is difficult to believe, with the number of registered companies in New Zealand, that until the mid-nineteenth century it was so difficult to incorporate a company. Perhaps in a few decades we will look back upon 2017 with the same mind-set in relation to personified land.

Legal persons can also be created by the judiciary. Although the New Zealand judiciary is yet to recognise the legal personality of nature, as alluded to earlier in the chapter, in March this year the High Court of the Indian state of Uttarakhand declared the Rivers Ganga and Yamuna legal persons. Subsequently, the Court there expanded upon this declaration by declaring the entire ecosystem a legal person:

“We ... declare the Glaciers including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls, legal entity/ legal person/juristic person/juridical person/ moral person/artificial person having the status of a legal person”.³⁸

The Court created the legal persons to preserve and conserve the ecosystem.³⁹

³⁵ Ulrich Klein “Belief-Views on Nature — Western Environmental Ethics and Māori World Views” (2000) 4 NZJEL 81 at 101, 105, and 107 – 108; Law Commission Māori Custom and Values in New Zealand Law (NZLC SP 9, 2001) at [47]; Valmaine Toki “Adopting a Māori Property Rights Approach to Fisheries” (2010) NZJEL 197 at 200; and James Morris and Jacinta Ruru “Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples’ Relationships to Water” (2010) 14(2) AILR 49 at 49.

³⁶ Stone, above n 18, at 453.

³⁷ Campbell, above n 21, at 27.

³⁸ *Miglani v State of Uttarakhand*, above n 14, at 64.

³⁹ *Miglani v State of Uttarakhand*, above n 14, at 64.

III - The Rights and Duties of Legal Persons

A - Rights and Duties as the Defining Criteria

As alluded to, legal persons are commonly defined as entities that are capable of rights and duties.⁴⁰ As stated by Neil Campbell in *Company Law in New Zealand*, legal personhood gives an entity “the legal capacity to become the subject of legal rights and duties”.⁴¹ According to *Butterworths Australian Legal Dictionary*, in legal theory being capable of rights and duties is what defines personhood.⁴² Rights and duties are interconnected; a rights holder has a legally enforceable claim against another that has a duty to not breach that right.⁴³ As stated by John Salmond, “a right is an interest recognised and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard of which is a wrong.”⁴⁴ Legal relations can therefore be created between two legal persons based on mutual rights and duties.⁴⁵ According to Corbin, a “right” is owed to a person when another has a corresponding duty to do something in their favour, and will be legally sanctioned if they do not.⁴⁶ Bestowing an entity with legal personality enables the mutual respect of persons’ rights, and legal enforcement against breaches of those rights.⁴⁷ To explain, an owner of land can create such legal relations with another legal person, but not the land itself.⁴⁸ Giving land legal personality would allow it to form legal relationships with other persons that it otherwise could not have formed. Such relations may include the right to exclude others and the corresponding duty not to trespass; breach of such a right may give rise to damages in tort law.⁴⁹ Legal persons may also be subject to criminal law duties, in which case the duty is owed to the state.⁵⁰ It is well established that corporations can be liable for

⁴⁰ Solaiman, above n 19, at 157 – 158; Campbell, above n 21, at 23; Williams, above n 14, at 350; and Peter Nygh and Peter Butt (eds) *Butterworths Australian Legal Dictionary* (Butterworths, Australia, 1997) at 870.

⁴¹ Campbell, above n 21, at 23.

⁴² Nygh and Butt, above n 40, at 870.

⁴³ Arthur Corbin “Legal Analysis and Terminology” (1919 - 1920) 29(2) Yale LJ 163 at 167; and Solaiman, above n 19, at 159.

⁴⁴ John Salmond *Jurisprudence* (5th ed, Stevens and Haynes, London, 1916) at 181.

⁴⁵ Corbin, above n 43, at 165 – 167; and Solaiman, above n 19, at 158.

⁴⁶ Corbin, above n 43, at 167; and Solaiman, above n 19, at 158.

⁴⁷ Solaiman, above n 19, at 157 - 158.

⁴⁸ Solaiman, above n 19, at 158.

⁴⁹ Solaiman, above n 19, at 157 – 158; see Chapter four.

⁵⁰ Solaiman, above n 19, at 160.

wrongful acts.⁵¹ Giving land legal personality would allow it to legally enforce its rights, and be subject to the legal enforcement of its duties.

B - Variance in Rights and Duties

Nevertheless, as legal persons are artificial creations of law, the rights and duties of legal persons can be dictated by law. Therefore, there can be no set list of rights and duties acquired by an entity upon being declared a legal person. Interestingly, in 1983 the New Zealand Parliament equated the rights of companies to those of natural persons in an amendment to the Companies Act 1955: “a company has the rights, powers, and privileges of a natural person”.⁵² Shortly I will determine that natural and legal persons do not possess the same rights. Considering that conclusion, this amendment is strange. Responding to this amendment, the Court in *Re Arahi Properties Ltd* concluded that the correlation between companies and natural persons did not eliminate their inherent differences.⁵³ The following quote from an article written by Giora Shapira was reproduced in the case:⁵⁴

“Even possessed with the rights etc now given by the Act, a company cannot vote, wed or make a will. Conversely the natural person analogy does not deprive it of distinct corporate powers which have no application for an individual.”

The current Companies Act 1993 does not repeat this equating of companies to natural persons.

Legal persons do not necessarily possess the same rights and duties as natural persons. The following two examples will be used to demonstrate this point: incorporated companies and Te Urewera.

Incorporated companies have different rights and duties to natural persons. In New Zealand the Companies Act 1993 regulates how companies operate. Despite being a legal person, and therefore presumably capable of rights and duties, the Act does not afford companies the

⁵¹ Williams, above n 14, at 366.

⁵² Companies Amendment Act (No. 2) 1983, s 5.

⁵³ *Re Arahi Properties Ltd* [1989] 4 NZCLC 64,884 (HC) at 13 – 14.

⁵⁴ Giora Shapira “Ultra Vires: Not quite the end” [1985] NZLJ 124 at 126; *Re Arahi Properties Ltd*, above n 53, at 14; and *Company Law*, above n 15, at [CA16.01].

same rights and duties as natural persons. As per s 16 of the Act, a company has full capacity to carry on any activity or enter into any transaction, and full rights, powers and privileges to do so.⁵⁵ But this is subject to legislation, the general law, and restrictions imposed by a company's constitution.⁵⁶ These restrictions can therefore modify a company's rights and duties so that they are unequal to those of a natural person. For example, a director of a company has a duty to act in good faith and in the best interests of a company.⁵⁷ Therefore, a company has a right to its directors acting in this manner, and can sue a director for breach of this duty.⁵⁸ Natural persons do not possess such a right. As a company is an abstraction, there are also limits in the general law as to what rights and duties a company is capable of exercising.⁵⁹ For example, a company is incapable of the rights and duties associated with marriage.⁶⁰

Te Urewera cannot possess all the rights and duties of natural persons, or companies. The Te Urewera Act 2014 contains extensive provisions regulating how Te Urewera land is to be managed, and can therefore modify the rights and duties that Te Urewera is capable of exercising. For example, despite Te Urewera being the registered proprietor of Te Urewera land, such land can only be removed from Te Urewera by legislation.⁶¹ Conversely, both companies and natural persons can enter into a contract for the sale and purchase of their land without requiring legislation. Such an agreement gives rise to a corresponding duty on behalf of the purchaser to uphold the contract; should they fail to do so, remedies could be sought in court for a breach of contract.⁶² As Te Urewera is incapable of alienating its land by sale and purchase, it is therefore incapable of the rights associated with such an agreement. Interestingly, the Board may acquire land through a sale and purchase agreement on behalf of Te Urewera,⁶³ making Te Urewera capable of the associated duties.

⁵⁵ Section 16(1).

⁵⁶ Section 16(1).

⁵⁷ Section 131.

⁵⁸ Sections 131 and 138A.

⁵⁹ Section 16(1); and Campbell, above n 21, at 24.

⁶⁰ Campbell, above n 12, at 24; *Company Law*, above n 15, at [CA16.02]; and Shapira, above n 54, at 126.

⁶¹ Section 111(1).

⁶² See *Marlborough District Council v Altimarloch Joint Venture Ltd* [2012] NZSC 11, [2012] 2 NZLR 726.

⁶³ Section 104(1)(b).

C - Purpose of Legal Personality

Legal persons are created to fulfil a purpose. As stated by Sharma J in *Lalit Miglani v State of Uttarakhand*, “many kinds of juristic persons have been created by law as the society require for its development.”⁶⁴ In this recent case, an entire ecosystem (“Himalayan Mountain Ranges, Glaciers, rivers, streams, rivulets, lakes, jungles, air, forests, meadows, dales, wetlands, grasslands and springs”) was declared a legal person in order to ensure its survival, safety, sustenance and resurgence.⁶⁵ As legal persons are created by law to fulfil a societal purpose, their rights and duties must be regulated in a manner that fulfils this purpose. Therefore, it follows that rights and duties will vary between legal persons if their reason for existence varies. For example, the Companies Act 1993 is an “Act to reform the law relating to companies”, with two of the specific purposes being “to provide basic and adaptable requirements for the incorporation, organisation, and operation of companies; and to define the relationships between companies and their directors, shareholders, and creditors”.⁶⁶ Considering the example referred to above, requiring that directors owe duties to the company facilitates this purpose and would simply have no application to natural persons. In contrast, the Te Urewera Act 2014 is “to establish and preserve in perpetuity a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance...”.⁶⁷ Being an area of naturally and culturally important land, restricting its alienation is necessary to fulfil the purpose for which it was created. In conclusion, the purpose for creating a legal person necessarily dictates the rights and duties attributed to that legal person.

⁶⁴ *Miglani v State of Uttarakhand*, above n 14, at 63.

⁶⁵ *Miglani v State of Uttarakhand*, above n 14, at 63.

⁶⁶ (b and c).

⁶⁷ Section 4.

D - Christopher Stone and the Meaning of Legal Rights

The legal personification of natural resources originated in the work of Christopher Stone, an American Professor of Law⁶⁸. Stone also equates legal personhood with being a holder of rights,⁶⁹ and discusses four criteria that he believes define what it means to possess legal rights.⁷⁰ First, the entity must be able to bring legal proceedings at its own will.⁷¹ Secondly, injury to the entity must be taken into account in determining whether to grant legal relief.⁷² Thirdly, any relief granted must benefit the entity itself.⁷³ Fourthly, “most obviously”, a public authoritative body must be prepared to review actions that are inconsistent with those rights.⁷⁴

Considering Stone’s analysis, declaring land a legal person, and thus making it a rights holder, would drastically impact proceedings concerning land. First, rather than the owner bringing proceedings for damage to their land, the land could bring proceedings in its own name.⁷⁵ Secondly, injury to the land itself would be considered when determining whether to grant legal relief, not just the indirect injury to humans.⁷⁶ Thirdly, where land is a legal person, compensation will be issued for the benefit of the land, not to an owner.⁷⁷ Thus, the amount of damages awarded may be very different. Consider an area of productive forestry, owned by another, has been trespassed and damaged; both the owner’s economic interests and the natural ecosystem of the forest was harmed. As concluded by Stone, the cost of making a harmed natural resource whole may be greater than the cost of making the owner’s interests whole.⁷⁸ As it would be the owner bringing the proceedings, damages would be calculated to make the interests of the owner whole, and would not incorporate the costs of repairing the natural ecosystem unless

⁶⁸ Stone, above n 18; Jacinta Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks” (PHD Dissertation, University of Victoria, 2012) at 206 – 207; James Morris “Affording New Zealand rivers legal personality: a new vehicle for achieving Māori aspirations in co-management?” (LLM Dissertation, University of Otago, 2009) at 4.

⁶⁹ Stone, above n 18, at 452.

⁷⁰ Stone, above n 18, at 458.

⁷¹ Stone, above n 18, at 458.

⁷² Stone, above n 18, at 458.

⁷³ Stone, above n 18, at 458.

⁷⁴ Stone, above n 18, at 458.

⁷⁵ Stone, above n 18, at 458 – 460.

⁷⁶ Stone, above n 18, at 460 – 461.

⁷⁷ Stone, above n 18, at 462.

⁷⁸ Stone, above n 18 at 462.

it affected the owner's interests.⁷⁹ The costs to repair a forest may include the costs of reseeded, and restocking wildlife, costs that an owner may not necessarily suffer.⁸⁰ By declaring land a legal person, compensation would be calculated to make the natural ecosystem whole.⁸¹ The fourth criteria is straightforward: the courts would review actions of other persons that are inconsistent with the rights of the land.⁸²

Legal personality has been equated with being capable of rights and duties. Stone's criteria can be used to understand what is meant by having rights. As the personification of land is a very recent phenomenon, there exist no cases in which land has been a party to the proceedings. However, considering these conclusions, declaring land a legal person would allow the land to sue and be sued, and be subject to criminal prosecution. These issues will be the sole focus of Chapter Four.

IV - Universal Principles of Legal Personality

It has been established that the rights and duties of legal persons vary to those of natural persons and to other legal persons. Therefore, there is no set list of rights and duties that are acquired by an entity upon being declared a legal person. Despite this variance, there must be some commonality between legal persons. As has been discussed, various theorists propose that this commonality is being capable of rights and duties. Here I will consider whether there are any other universal principles that apply to legal persons. Namely, the application of the New Zealand Bill of Rights Act 1990.

⁷⁹ Stone, above n 18, at 462.

⁸⁰ Stone, above n 18, at 462.

⁸¹ See Stone, above n 18, at 462.

⁸² See Stone, above n 18, at 458.

A - *The New Zealand Bill of Rights Act 1990*

The New Zealand Bill of Rights Act 1990 applies to all legal persons in New Zealand.⁸³ That is, “except where the provisions of this Bill otherwise provide” and “so far as practicable”.⁸⁴ However, despite applying to legal persons, this does not mean legal persons and natural persons have the same rights under Act. This part will explain how the Act applies to legal persons. First, the rights only apply to legal persons “so far as practicable”,⁸⁵ with some rights having no application to legal persons. For example, the right to refuse to undergo medical treatment would have no application to most legal persons.⁸⁶ Further, the legal relationship between the New Zealand Bill of Rights Act 1990 and other enactments allows Parliament to limit the rights of both legal and natural persons. Where possible, enactments must be given a meaning that is consistent with the rights contained in the Act.⁸⁷ However, a court cannot invalidate any statutory provision in any way merely because it is inconsistent with those rights.⁸⁸ Therefore, Parliament can limit the rights of both natural persons and legal persons through legislation, to the extent that the rights apply to these entities in very different ways. Nevertheless, by declaring an entity a legal person, the entity will become subject to the New Zealand Bill of Rights Act 1990.⁸⁹ Despite this not necessarily meaning the legal person will have the same rights as natural persons, or other legal persons, it does bestow legal persons with rights that they were not subjected to before. Chapter Two will consider one application of the New Zealand Bill of Rights Act 1990 to Te Urewera.

V - *Conclusion*

This chapter has explored the general principles of legal personality. It has been established that the distinguishing feature of legal personhood is the capacity to possess rights and duties.

⁸³ New Zealand Bill of Rights Act 1990, s 29; and *Human Rights Law* (online looseleaf ed, Thomson Reuters New Zealand) at [BOR29.2].

⁸⁴ Section 29.

⁸⁵ Section 29.

⁸⁶ Section 11; and *Human Rights Law*, above n 83, at [BOR29.2].

⁸⁷ Section 6.

⁸⁸ Section 4.

⁸⁹ Section 29.

However, this does not mean that all legal persons possess the same rights and duties. As artificial creations of law, their rights and duties can be dictated by the lawmaker. As explained by Christopher Stone, to possess rights means to be able to bring proceedings in one's name, have injury to oneself considered, and be granted relief to one's own benefit.⁹⁰ A public authoritative body, such as the courts, must also be prepared to review actions that are inconsistent with one's rights.⁹¹ Considering these conclusions, declaring land a legal person would allow it to possess rights and have these rights upheld in the courts. As legal persons are also capable of duties, they could also have their own actions reviewed. Chapter Four will evaluate in detail how legal proceedings could involve legal persons.

⁹⁰ Stone, above n 18, at 458.

⁹¹ Stone, above n 18, at 458.

CHAPTER TWO: MĀORI ASPIRATIONS AND LEGAL PERSONALITY

For legal personality to be a worthwhile alternative to traditional land ownership models, it should fulfil Māori aspirations for land ownership. This chapter will begin by explaining how Māori can acquire such legal rights to land; it is important to understand that the personification of land would be implemented as redress pursuant to Treaty settlement. I will then explain how Māori traditionally view land, and discuss what aspirations Māori may have for land ownership. I will then evaluate whether the Te Urewera Act 2014 fulfils these aspirations. The Te Urewera Act 2014 gives effect to part of the Treaty Settlement between the Crown and Tūhoe by declaring Te Urewera a legal person. This is the first example of the legal personification of land in New Zealand and it is likely that future areas of personified land will be created by similar legislation. Therefore, it is necessary to evaluate how the statutory provisions fulfil Māori aspirations for land ownership models.

I - Explaining Māori Rights to Land

Prior to the arrival of Europeans, Māori occupied the whole of Aotearoa,⁹² and on the 6th of February 1840 the Treaty of Waitangi guaranteed to Māori the full, exclusive and undisturbed possession of their lands.⁹³ However, the Treaty is not legally enforceable unless incorporated into legislation.⁹⁴ There are several ways by which this can occur. First, Parliament may incorporate the principles of the Treaty of Waitangi into legislation; such incorporation often requires decision-makers to act consistently with, or give effect to, the “principles of the Treaty of Waitangi”.⁹⁵ Secondly, legislation may give Māori legal rights to land pursuant to Treaty settlement. Such settlement is set out in a deed and acts to settle in full Māori claims against the

⁹² John Wilson “History” (8 Feb 2005) Te Ara – the Encyclopaedia of New Zealand <<https://teara.govt.nz>> at 2.

⁹³ Treaty of Waitangi (Tiriti o Waitangi), Article the Second (accessed via Treaty of Waitangi Act 1975, sch 1).

⁹⁴ *Te Heuheu Tukino v Aotea District Māori Land Board* [1941] NZLR 590 (PC) at 596 – 597; *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 655 – 656; and Morris, above n 68, at 33.

⁹⁵ Crown Minerals Act 1991, s 4; Resource Management Act 1991, s 8; State-Owned Enterprises Act 1986, s 9; and Jacinta Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi” in Jacinta Ruru, Paul Scott and Duncan Webb (eds) *The New Zealand Legal System: Structures and Processes* (6th ed, LexisNexis, Wellington, 2016) 213 at 241.

Crown for breaching the Treaty of Waitangi.⁹⁶ The agreement is usually enacted into legislation and may implement various land ownership models for providing redress.⁹⁷ Such models include: a fee simple estate vested with Māori;⁹⁸ a fee simple estate vested with Māori and then gifted back to the Crown unconditionally (for sites of outstanding significance);⁹⁹ and land vested with Māori as a reserve, who hold and administer the land subject to the Reserves Act 1977.¹⁰⁰ It was pursuant to Treaty settlement that legislation was enacted to declare Te Urewera and Te Awa Tupua legal persons, a new model of land ownership.¹⁰¹ Alternatively, Māori may pursue legal rights to land in the courts through the doctrine of customary title.¹⁰² Chapter Three will compare two land ownership models to legal personality, including customary title, in order to evaluate whether legal personality is a worthwhile alternative for furthering Māori interests in land.

II - Māori Aspirations for Land Ownership

For a land ownership model to further and protect the interests of Māori, it must recognise and provide for tikanga Māori. There are significant differences between Māori and Western worldviews concerning the natural world. This part will first explain these differences, to understand whether legal personality would better reflect the Māori worldview than current ownership models. I will then attempt to describe two significant Māori aspirations for land ownership: kaitiakitanga, and rangatiratanga. The term “attempt” is used, for the application of tikanga Māori, and thus Māori aspirations for land ownership, may vary between iwi.¹⁰³

⁹⁶ Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 255; see Ngāti Apa (North Island) Claims Settlement Act 2010, s 13; Ngati Toa Rangatira Claims Settlement Act 2014, s 16; Ngati Tama Claims Settlement Act 2003, s 12; Ngāi Tahu Claims Settlement Act 1998, s 461; and Ngāti Awa Claims Settlement Act 2005, s 15.

⁹⁷ Office of Treaty Settlements *Healing the past, building a future* (Ministry of Justice, March 2015) at 94.

⁹⁸ Ngāti Apa (North Island) Claims Settlement Act 2010, ss 44 – 50; Ngati Toa Rangatira Claims Settlement Act 2014, ss 60 – 68; Ngati Tama Claims Settlement Act 2003, ss 28 – 33; and Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

⁹⁹ Ngāi Tahu Claims Settlement Act 1998, pt 3; and Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

¹⁰⁰ Ngāti Awa Claims Settlement Act 2005, ss 29 – 34; Ngati Toa Rangatira Claims Settlement Act 2014, ss 69 – 78; Ngāti Apa (North Island) Claims Settlement Act 2010, ss 51 – 54; Ngati Tama Claims Settlement Act 2003, s 34; and Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

¹⁰¹ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1); and Te Urewera Act 2014, s 11(1).

¹⁰² *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [4]; *Re Tipene* [2016] NZHC 3199 [2017] NZAR 559 at 573 – 574; and Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 243.

¹⁰³ Stephanie Vieille “Māori Customary Law: A Relational Approach to Justice” (2012) 3(1)(4) IIPJ at 2.

A - The Western Worldview

The Western worldview of nature is influenced by religion, science, and economic order.¹⁰⁴ In “Belief-Views on Nature — Western Environmental Ethics and Māori World Views”, Ulrich Klein discusses this worldview in detail.¹⁰⁵ I will repeat several of his observations here, to deliver a short description of the Western worldview of nature. First, whilst Western society is no longer in a “Christian-age”, Christian beliefs have nevertheless shaped its political, economic and legal systems.¹⁰⁶ Christianity regards human beings and nature as separate,¹⁰⁷ with humans given the term “master”.¹⁰⁸ Secondly, science traditionally leads to an anthropocentric view of nature; human life is considered superior to the natural environment.¹⁰⁹ Thirdly, market utilitarianism underlies all Western economic systems;¹¹⁰ the value of nature is defined in monetary terms, and then weighed against other wants in a cost-benefit analysis to determine whether nature should be exploited.¹¹¹ Fourthly, the market requires the existence of private, transferrable property rights to resources.¹¹²

B - The Māori Worldview

Conversely, tikanga Māori, or Māori law, “encapsulates a certain way of life that depends upon the relationships between all things, including between people and gods, different groups of people, and people and everything in the surrounding world.”¹¹³ Unlike the codified nature of western laws, tikanga Māori is law by custom and tradition; “to codify tikanga would be to kill

¹⁰⁴ Klein, above n 35, at 83.

¹⁰⁵ At 83 – 104.

¹⁰⁶ At 84.

¹⁰⁷ At 86.

¹⁰⁸ At 87.

¹⁰⁹ At 92.

¹¹⁰ At 97.

¹¹¹ At 98.

¹¹² At 101.

¹¹³ Morris and Ruru, above n 35, at 49.

it.”¹¹⁴ Sourced in Māori cosmology, Māori have a spiritual connection to nature.¹¹⁵ The world is perceived as a unified whole; both people and nature exist together in a genealogical web, sharing the same ancestral source.¹¹⁶ Māori are descendants of the land: “Kei raro i te tarutaru, te tuhi o ngā tū puna. The signs or marks of the ancestors are embedded below the roots of the grass and the herbs.”¹¹⁷ This whakapapa (or genealogy) connects Māori to the land, so that they are related.¹¹⁸ When Māori first discovered Aotearoa New Zealand, they became the people of the land, or tangata whenua.¹¹⁹ Rather than owners of land, human beings belong to the land.¹²⁰ Land is therefore a main source of identity and links generations of Māori together.¹²¹ Rather than having a utilitarian approach to land use, economic activities must be undertaken in balance with nature.¹²² Therefore, land should be treasured and protected.¹²³ For a land ownership model to further and protect Māori interests, it must recognise and give effect to the deep connection between Māori and land.

1 - Kaitiakitanga

“Kaitiaki” means guardian, and “kaitiakitanga” the act of guardianship.¹²⁴ This concept is deeply embedded in the Māori worldview.¹²⁵ As stated by Carmen Kirkwood in “Kaitiakitanga: Māori perspectives on conservation”:

¹¹⁴ Joe Williams “The Maori Land Court - A Separate Legal System?” (occasional paper published by the New Zealand Centre for Public Law, Victoria University of Wellington, July 2001) at 8.

¹¹⁵ Toki, above n 35, at 200.

¹¹⁶ Klein, above n 35, at 105.

¹¹⁷ Law Commission, above n 35, at [47].

¹¹⁸ Toki, above n 35, at 200.

¹¹⁹ Morris and Ruru, above n 35, at 49.

¹²⁰ Klein, above n 35, at 107 – 108.

¹²¹ Klein, above n 35, at 108.

¹²² Klein, above n 35, at 116.

¹²³ Toki, above n 35, at 200.

¹²⁴ Mere Roberts and others “Kaitiakitanga: Māori perspectives on conservation” (1995) 2 Pacific Conservation Biology 7 at 12.

¹²⁵ Morris, above n 68, at 37.

“to be a kaitiaki means looking after one’s own blood and bones literally. One’s whanaunga and tupuna include the plants and animals, rocks and trees. We are all descended from Papatuanuku; she is our kaitiaki and we are in turn hers”¹²⁶

The relationship between the environment and Māori as kaitiaki is founded in whanaungatanga, “the web of relationships that embraces living and dead, present and past, human beings and the natural environment.”¹²⁷ Compliance with Kaitiakitanga was enforced by fear of divine retribution.¹²⁸ Ngati Porou share traditional stories of such consequences; it is said that Ruakapunga, the high priest of the cult of the kumara, sent pests to destroy the kumara crop after his birds were maltreated.¹²⁹ Other Māori would also enforce compliance through confiscation of resources.¹³⁰ As discussed, Māori may bring a Waitangi Tribunal claim against the Crown for breaching the principles of the Treaty of Waitangi.¹³¹ Kaitiakitanga is a central treaty principle.¹³² As such, Tribunal claims often focus on the Crown prejudicially limiting their ability to exercise kaitiakitanga.¹³³ It is important to recognise that kaitiakitanga is not passive custodianship; it requires active protection of resources by kaitiaki.¹³⁴ Kaitiakitanga is deeply spiritual; rather than being premised on proprietary ownership, it is about nurturing and caring for the environment with the permeance that one would for their family.¹³⁵ Kaitiakitanga can be practiced through: the maintenance of wāhi tapu, wāhi tūpuna and other sites of importance; protests against environmental degradation; and good resource management.¹³⁶ If a land ownership model is to give effect to the Māori worldview, it must provide for Māori to exercise kaitiakitanga over the land.

¹²⁶ Roberts, above n 124, at 13.

¹²⁷ Waitangi Tribunal *Ko Aotearoa Tēnei* (Wai 262, 2011) at 267.

¹²⁸ Roberts, above n 124, at 12.

¹²⁹ Ngati Porou “Kaitiakitanga | Environment” Te Runanganui o Ngati Porou <www.ngatiporou.com>

¹³⁰ Roberts, above n 124, at 12.

¹³¹ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 35.

¹³² Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks”, above n 68, at 321.

¹³³ Morris, above n 68, at 38.

¹³⁴ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 100.

¹³⁵ Waitangi Tribunal *Ko Aotearoa Tēnei*, above n 127, at 269.

¹³⁶ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 100.

2 - Rangatiratanga

The Waitangi Tribunal has described rangatiratanga as “the exercise by Māori of autonomy, authority, self-government, or self-regulation over their tribal domain, which includes lands, waters, and oceans, and, as an extension of that, it encapsulates their right to the development of their resources.”¹³⁷ Tino rangatiratanga is used in Article Two of the Treaty of Waitangi.¹³⁸ Tino connotes “quintessential”,¹³⁹ and magnifies the meaning of rangatiratanga to the unqualified exercise of chieftainship.¹⁴⁰ However, whilst the meaning of rangatiratanga used to mean chieftainship, it is now understood to mean the exercise of autonomy;¹⁴¹ current Māori rangatiratanga aspirations concern their right to “manage their own policy, resources, and affairs”.¹⁴² It is important to recognise that the concept of rangatiratanga characterises a totality of Māori grievances and aspirations.¹⁴³ Whilst this part focuses on Māori rangatiratanga aspirations for land, land ownership is just one of the important areas in which rangatiratanga aspirations permeate.¹⁴⁴ Some non-Māori observers believe rangatiratanga is an attack upon Crown sovereignty. However, these concepts can be compatible;¹⁴⁵ as stated by Māori Party MP for the electorate of Waiariki, Te Ururoa Flavell in regards to tino rangatiratanga, “people have got that mixed up with regards to having control over Aotearoa versus the ability to make decisions or be part of the decision-making process on decisions on our tribal land.”¹⁴⁶

¹³⁷ Waitangi Tribunal *Ahu Moana: The Aquaculture and Marine Farming Report* (Wai 95, 2002) at 64; and Morris, above n 68, at 44.

¹³⁸ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 1.

¹³⁹ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 4, n 7.

¹⁴⁰ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 3.

¹⁴¹ Richard Hill “People, land and the struggle for rangatiratanga/ autonomy in New Zealand” (2012) 19 *Identities: Global Studies in Culture and Power* 26 at 27.

¹⁴² Wakareo-a-ipurangi online Māori dictionary, [References: WR-CL.114 and WR-HMN.6326] available at <http://www.reotupu.co.nz> (accessed 22 January 2008) as cited Morris, above n 68, at 43.

¹⁴³ Hill, above n 141, at 35.

¹⁴⁴ Hill, above n 141, at 35.

¹⁴⁵ Morris, above n 68, at 45.

¹⁴⁶ Charles Hawksley and Richard Howson “Tino Rangatiratanga and Mana Motuhake: Nation, state and self-determination in Aotearoa New Zealand” (2011) 7(3) *AlterNative: An International Journal of Indigenous Peoples* 247 at 250.

III - Te Urewera Act 2014

This part will briefly outline how the Te Urewera Act 2014 operates, leading into a discussion as to how various provisions serve to fulfil Māori aspirations. Te Urewera was declared a legal person under the Te Urewera Act 2014: “Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person.”¹⁴⁷ The Act was enacted as a form of redress pursuant to Crown settlement with Tūhoe,¹⁴⁸ described as the “heart of the settlement”.¹⁴⁹ The Deed of Settlement sought to celebrate a new relationship between the Crown and Tūhoe, and provide just and honourable redress for the historical grievances of the Crown against Tūhoe.¹⁵⁰ Once a National Park, the land comprising Te Urewera ceased to be Crown owned and became a fee simple estate vested in Te Urewera itself.¹⁵¹ The land must be held in accordance with the Te Urewera Act 2014,¹⁵² with this Act laying down extensive rules as to how Te Urewera must be managed. As Te Urewera is an artificial legal person, another person or group of persons must make decisions on its behalf. The Te Urewera Board was thus created “to act on behalf of, and in the name of, Te Urewera; and to provide governance for Te Urewera”.¹⁵³ Despite Te Urewera land being registered in the name of Te Urewera,¹⁵⁴ the Board must exercise all the rights, powers and duties of Te Urewera on behalf of, and in the name of Te Urewera,¹⁵⁵ and is responsible for its liabilities.¹⁵⁶ The Board has a budget, which must be agreed to by the Board, chief executive of Tūhoe Te Uru Taumatua, and Director-General of Conservation.¹⁵⁷ The chief executive and Director-General must then equally contribute to the budget, unless it is agreed otherwise.¹⁵⁸ These two parties are also responsible for the operational management of Te Urewera.¹⁵⁹ The

¹⁴⁷ Section 11.

¹⁴⁸ Office of Treaty Settlements (4 June 2013) “Ngāi Tūhoe Deed of Settlement” at Part A: Te Urewera.

¹⁴⁹ “Ngāi Tūhoe Deed of Settlement”, above n 148, at p 9.

¹⁵⁰ “Ngāi Tūhoe Deed of Settlement”, above n 148, at p 9.

¹⁵¹ National Parks Act 1980, s 6(1)(g); Te Urewera Act 2014, ss 12 and 14.

¹⁵² Te Urewera Act 2012, s 12(3).

¹⁵³ Sections 16 and 17.

¹⁵⁴ Section 89(1)(a).

¹⁵⁵ Sections 11(2)(a) and 89(2).

¹⁵⁶ Section 11(2)(b).

¹⁵⁷ Section 38(1).

¹⁵⁸ Section 38(2).

¹⁵⁹ Section 50(1).

Act extensively regulates the management of Te Urewera. For example, it controls what type of activities can take place in Te Urewera,¹⁶⁰ provides for the Board to make bylaws,¹⁶¹ proscribes offences,¹⁶² and describes how land can be added to or removed from Te Urewera.¹⁶³

IV - The Te Urewera Act 2014 and Māori Aspirations

A - Kaitiakitanga

Tūhoe aspirations are represented by the Te Urewera Board, and through the chief executive of Tūhoe Te Uru Taumatua. As stated, the Te Urewera Board was created “to act on behalf of, and in the name of, Te Urewera; and to provide governance for Te Urewera,”¹⁶⁴ and “must exercise all the rights, powers and duties of Te Urewera on behalf of, and in the name of Te Urewera”,¹⁶⁵ and is responsible for its liabilities.¹⁶⁶ As stated by Catherine Iorns, such “guardianship ensures that all activities affecting ... Te Urewera are monitored, and at all stages the interests of ... Te Urewera are upheld by a body appointed to do solely that.”¹⁶⁷ For the first three years the Board was comprised of half Tūhoe Te Uru Taumatua appointed members, and half Crown appointed members.¹⁶⁸ Now, two thirds of the Board are Tūhoe Te Uru Taumatua appointed members.¹⁶⁹ The Chair of the Board must be appointed by the trustees of Tūhoe Te Uru Taumatua (Tūhoe Trust).¹⁷⁰ This composition ensures that Tūhoe is represented. Kaitiakitanga means actively looking after the natural environment.¹⁷¹ By comprising most of the Board, Tūhoe play an active role in exercising guardianship over the land. As discussed, kaitiakitanga does not rest on ownership, but is based on a permanent relationship with the environment to care and nurture

¹⁶⁰ Section 55.

¹⁶¹ Section 70.

¹⁶² Section 76.

¹⁶³ Sections 100 – 112.

¹⁶⁴ Sections 16 and 17.

¹⁶⁵ Sections 11(2)(a) and 89(2).

¹⁶⁶ Sections 11(2)(b).

¹⁶⁷ Catherine Iorns “A world where the rivers are people too” (22 June 2017) Elgar Blog <<https://elgar.blog>>.

¹⁶⁸ Section 21(1).

¹⁶⁹ Sections 21(2).

¹⁷⁰ Sections 7 and 24.

¹⁷¹ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 100.

it.¹⁷² Therefore, by governing Te Urewera whilst acknowledging that it is a distinct life that cannot be owned, Tūhoe are able to exercise kaitiakitanga over the land.

B - Rangatiratanga

The Te Urewera Act 2014 provides for Tūhoe interests in Te Urewera land to be recognised, but may not provide Tūhoe with enough authority to say they exercise rangatiratanga over the land. It is true that the Te Urewera Act 2014 includes provisions to ensure Tūhoe interests are considered in decisions. First, the Board “must” consider and appropriately provide for the relationship of iwi and hapū and their culture and traditions with Te Urewera.¹⁷³ The purpose of this is to recognise and reflect Tūhoetanga,¹⁷⁴ and the Crown’s responsibility under the Treaty of Waitangi (Te Tiriti o Waitangi).¹⁷⁵ Secondly, the Board “may” also consider and give expression to Tūhoetanga and Tūhoe concepts of management in performing its functions.¹⁷⁶ Thirdly, every person acting under the Act must ensure specific principles are met, including that: Tūhoetanga, which gives expression to Te Urewera, is valued and respected;¹⁷⁷ the relationship of other iwi and hapū with parts of Te Urewera is recognised, valued, and respected;¹⁷⁸ and the historical and cultural heritage of Te Urewera is preserved.¹⁷⁹ As stated in the legislation, Parliament intended for the Act to be interpreted in a manner that best furthers the agreements expressed in the deed of settlement.¹⁸⁰ Therefore, by being a party to the settlement, it can be argued that Tūhoe exercised control in determining how the land was to be managed.

Despite this, the Act does not allow Tūhoe to exercise complete autonomy over Te Urewera lands. As discussed, Māori rangatiratanga aspirations concern their right to “manage

¹⁷² Waitangi Tribunal *Ko Aotearoa Tēnei*, above n 127, at 269.

¹⁷³ Section 20(1).

¹⁷⁴ Section 20(2)(a).

¹⁷⁵ Section 20(2)(b).

¹⁷⁶ Section 18(2).

¹⁷⁷ Section 5(1)(c).

¹⁷⁸ Section 5(1)(d).

¹⁷⁹ Section 5(1)(e).

¹⁸⁰ Section 6.

their own policy, resources, and affairs”.¹⁸¹ Tūhoe are represented on the Board, and therefore have an active role in the management of Te Urewera. However, as the Board must act consistently with the Act,¹⁸² Tūhoe do not have absolute authority over the management of Te Urewera. The Act lays down extensive requirements for how the Board must operate. For example, the Act stipulates a range of functions that are to be carried out by the Board.¹⁸³ Some of these are mandatory, such as preparing and approving the Te Urewera management plan.¹⁸⁴ Further, the Act specifies how the Board must make decisions;¹⁸⁵ the Board must strive to reach unanimity for some decisions,¹⁸⁶ and consensus for others.¹⁸⁷ If that is not possible, the Act still requires a decision to be made with at least an 80% majority.¹⁸⁸ These statutory provisions limit the Board’s freedom to manage the land and do not completely embrace rangatiratanga. As recognised by the Waitangi Tribunal, “the urge for independence and the determination to secure their own destiny, so that their customs and beliefs – and thus their identity – can be protected, has long been intrinsic to the Tūhoe way of life.”¹⁸⁹ The Tūhoe people also had political desires for separate sovereignty, described by Tūhoe activist Tame Iti as “a nation within a nation”.¹⁹⁰ These aspirations call for much more autonomy than the Te Urewera Act 2014 provides for Tūhoe. Further, the right to exclude others, and transfer land are usually considered essential components of property rights. Te Urewera, despite being a legal person, does not possess these rights. Te Urewera cannot exclude public access and cannot alienate its land; only Parliament can alienate Te Urewera land through legislation. Further, being created by legislation, Parliament has the power to revoke its legal personality at any time. As stated by Mick Strack in “Land and rivers can own themselves”, “the Crown’s “gift” to Māori... is powerfully

¹⁸¹ Wakareo-a-ipurangi online Māori dictionary, [References: WR-CL.114 and WR-HMN.6326] available at <http://www.reotupu.co.nz> (accessed 22 January 2008) as cited in Morris, above n 68, at 43.

¹⁸² Te Urewera Act 2014, s 19(2).

¹⁸³ Section 18.

¹⁸⁴ Section 44(1).

¹⁸⁵ Sections 31 – 37.

¹⁸⁶ Section 33.

¹⁸⁷ Section 34.

¹⁸⁸ Section(1)(a).

¹⁸⁹ Waitangi Tribunal Te Urewera: Pre-publication, Part 1 (Wai 894, 2009) at ix; Hawksley and Howson, above n 146, at 253.

¹⁹⁰ Hawksley and Howson, above n 146, at 253.

symbolic, but offers little of substance.”¹⁹¹ It is also important to recognise the relationship between kaitiakitanga and rangatiratanga; kaitiakitanga requires an active exercise of power by those that hold authority to be kaitiaki.¹⁹² Therefore, if Tūhoe do not accept the Board’s authority, this may weaken the exercise of kaitiakitanga.

C - Concluding Comments

Despite not possessing complete authority, the creation of the Te Urewera Board is undoubtedly revolutionary by giving effect to the Māori worldview. This will be discussed in Chapter Three, in which the concept of legal personality itself will be compared to alternative ownership models. Further, by stipulating how the Te Urewera Board will operate, the Te Urewera Act 2014 ensures that the Board will meet its obligations to Te Urewera. As explained by Renee Rewi and Torivio Fodder, good governance is crucial to unlocking the potential of Māori tikanga.¹⁹³ This potential is demonstrated by Te Kawa o Te Urewera, the Te Urewera management plan created by the Te Urewera Board.¹⁹⁴ The Te Urewera Board must create this plan,¹⁹⁵ to identify how the purpose of the Te Urewera Act 2014 can be achieved and to set objectives and policies for Te Urewera.¹⁹⁶ Te Kawa o Te Urewera gives expression to tikanga Māori throughout the plan. As stated by Tamati Kruger (the Chairman of the Board) in the opening words: “Te Kawa is about the management of people for the benefit of the land – it is not about land management.”¹⁹⁷ The purpose of Te Kawa is to return Tūhoe to their place in nature, as creations of Te Urewera-Papatūānuku (the land and a powerful mother earth figure).¹⁹⁸ Despite the Te Urewera Board being somewhat constrained by the provisions of the Te Urewera Act 2014, the Act provides a framework within which the Board can give expression to tikanga Māori .

¹⁹¹ Mick Strack “Land and rivers can own themselves” (2017) 9(1) IJLBE 4 at 14.

¹⁹² Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 100.

¹⁹³ Renee Rewi and Torivio Fodder “Unlocking Māori Potential Through Good Māori Governance Practices” (2013) 21 Wai L Rev 154 at 154.

¹⁹⁴ See Te Urewera Act 2014, ss 44 - 48; Te Kawa o Te Urewera, above n 8.

¹⁹⁵ Te Urewera Act 2014, s 44(1).

¹⁹⁶ Section 45.

¹⁹⁷ Te Kawa o Te Urewera, above n 8, at 7.

¹⁹⁸ Te Kawa o Te Urewera, above n 8, at 15; and Te Ahukaramū Charles Royal “Papatūānuku – the land” (24 September 2007) Te Ara - the Encyclopedia of New Zealand <www.teara.govt.nz> at 1.

V – Conclusion

Māori have a very different traditional worldview to Western societies. This chapter has sought to explain how Māori traditionally view land, and to outline two Māori aspirations for land ownership: kaitiakitanga and rangatiratanga. For legal personality to be a worthwhile alternative to traditional land ownership models, it should fulfil these aspirations. In New Zealand, land has been recognised as a legal person once by the Te Urewera Act 2014. As discussed, the provisions of this Act allow Tūhoe to exercise kaitiakitanga over the land but may not allow the complete exercise of rangatiratanga. Despite the Act not affording Tūhoe complete control over Te Urewera, it provides a framework within which the Te Urewera Board can govern Te Urewera in accordance with tikanga Māori . It was important to evaluate how this Act operates, as future legal persons may be created by a similar statutory framework. The next chapter will evaluate legal personality as a concept independent to statutory provisions, and discuss how it can give effect to the Māori worldview of land ownership.

CHAPTER THREE: LEGAL PERSONALITY AS A LAND OWNERSHIP MODEL

This chapter will evaluate what legal personhood itself can achieve as a land ownership model and how it compares to existing models. As personified land would be created as a form of redress, this chapter will begin by giving a brief background to Treaty settlements. Then, it will consider how legal personality aligns with the traditional Māori worldview of land ownership, how it can act as a compromise between the Crown and Māori in a Treaty settlement, and how the New Zealand Bill of Rights Act 1990 could apply. Whilst Te Urewera will be drawn upon as an example, this chapter seeks to evaluate the personification of land independent to the provisions of any statutory framework used to create the legal person. Finally, legal personality will be compared to two current land ownership solutions: customary title and fee simple title.

1 - Background to Treaty Settlements

As discussed in Chapter Two, most land ownership models are implemented as a form of redress pursuant to Treaty Settlement. This dissertation is unable to provide a detailed historical account of Māori land loss. However, to briefly summarise: the Crown has not always protected Māori interests in land, meaning Māori have lost most of their land and with it, have been deprived of their places of spiritual and cultural value.¹⁹⁹ The infamous case of *Wi Parata v Bishop of Wellington* demonstrates the lack of respect for Māori land rights in the late 19th century; the Treaty of Waitangi was declared a “simple nullity” as Māori were incapable of ceding sovereignty to the Crown, “the first civilised occupier of a territory thinly peopled by barbarians without any form of law or civil government”.²⁰⁰ This attitude has changed. In 1975, the Waitangi Tribunal was established under the Treaty of Waitangi Act 1975, allowing Māori to bring claims against the Crown for breaching the principles of the Treaty of Waitangi.²⁰¹ The creation of this Tribunal

¹⁹⁹ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 13.

²⁰⁰ *Wi Parata v Bishop of Wellington* (1877) 3 NZ Jur (NS) SC at 77 as cited in *Minister of Conservation v Māori Land Court* [2008] NZCA 564, [2009] 3 NZLR 465 at [126].

²⁰¹ Treaty of Waitangi Act 1975, ss 4(1), 5 and 6; Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 251.

demonstrates that the Crown recognised the wrongdoings of colonisation.²⁰² Further, Treaty settlements contain extensive acknowledgements and apologies to Māori, recognising that Māori were civil, not barbaric, people occupying Aotearoa, and Western colonisation threatened their connection with the land.²⁰³ In light of this background, it is imperative that land ownership models are premised on the concept of redress.

This concept is demonstrated by the Treaty Settlement with Tūhoe, in which Te Urewera was bestowed with legal personhood. As stated in the Deed of Settlement:

“The Crown acknowledges that it has failed to meet many of its Treaty obligations to Tūhoe. Despite the previous efforts of Tūhoe, the Crown has failed to deal with the long standing and legitimately held grievances of Tūhoe in an appropriate way, and recognition of those grievances is long overdue. The sense of grief and loss suffered by Tūhoe and the impact of the Crown’s failings endures today.”²⁰⁴

Despite a “lasting legacy of pain and suffering”, Crown grievances had never been adequately addressed.²⁰⁵ Therefore, the settlement was to “strip away the sapwood of the wrongs and grievances of one and a half centuries and reveal the heartwood of resolution.”²⁰⁶ This background is demonstrated by the following introductory words to the Deed of Settlement:²⁰⁷

“Pou Mataho gazes past the paepae, across the marae, where there is no shelter from the fierce blaze of the sun or the bleakness of winter. It sees a century and a half of the pain-filled history of Tūhoe.

²⁰² Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks”, above n 68, at 114.

²⁰³ Office of Treaty Settlements (20 December 2001) “Ngāti Tama Deed of Settlement” at p 34 – 35; Office of Treaty Settlements (27 March 2003) “Ngāti Awa Deed of Settlement” at 69 – 73; Office of Treaty Settlements (8 July 2017) “Ngāti Tūwharetoa Deed of Settlement” at 115 – 126; Office of Treaty Settlements (7 December 2012) “Ngāti Toa Deed of Settlement” at 45 – 47; “Ngāi Tūhoe Deed of Settlement”, above n 148, at 82 – 171; and Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks”, above n 68, at 136.

²⁰⁴ “Ngāi Tūhoe Deed of Settlement”, above n 148, at 82.

²⁰⁵ Tariana Turia “Tariana Turia: Te Urewera and Tuhoie are inseparable” *The New Zealand Herald* (online ed, Auckland, 14 May 2010).

²⁰⁶ “Ngāi Tūhoe Deed of Settlement”, above n 148, at 7.

²⁰⁷ “Ngāi Tūhoe Deed of Settlement”, above n 148, at 2 – 3.

But then Tūhoe and the Crown come together on the verandah, to talk with each other partially protected from the elements but not yet within the comfort of the whareniui.

...

As they move on they reach te Pou Tu a Rongo, the post dedicated to Rongo, the god of peace and goodwill. Tūhoe and the Crown share this post, by reason of the offering by the Crown, and the acceptance of that by Tūhoe, of the Crown's apology for the grievous wrongs done to the Children of the Mist.

Because of such offering and acceptance there will be a future of peace and goodwill, such that te Tahuhu may now support the shelter and comfort of those within the whareniui, Tūhoe and the Crown.

Amene.”

II - Legal Personality as a Land Ownership Model

In New Zealand there are only two instances where elements of the environment have been given personhood: Te Urewera and Te Awa Tupua. Both legal persons were created by very descriptive legislation, the Te Urewera Act 2014 and Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.²⁰⁸ Alongside creating the legal persons, the legislation created extensive rules as to how the person must be managed. Most of these provisions could have been enacted without creating the legal person. For example, the Te Urewera Board could have been created to manage the land even with the land remaining Crown owned. Therefore, legal personhood must provide something more, something that is not proscribed by legislation. This part will evaluate what legal personality itself can achieve, separate to the statutory framework.

²⁰⁸ Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 14(1); Te Urewera Act 2014, s 11(1).

A - Legal Personality and the Māori Worldview

Legal personality is an innovative way to align redress with the Māori worldview of land ownership. Māori consider themselves genealogically linked to the natural world, meaning land is treasured as an ancestor, rather than owned as a commodity like in western societies.²⁰⁹ Through colonisation, Māori property rights and values were subsumed into western property rights and values.²¹⁰ Despite the Crown becoming more willing to give redress for breaches of the Treaty of Waitangi, redress generally fits within a western structure of land ownership.²¹¹ This is the same for many institutions created to protect Māori interests; as stated by Ani Mikaere, “we have to remember that our tikanga is the product of our tino rangatiratanga, whereas creations of Pākehā law – the Māori Land Court, the Children and Young Persons Act, or the Waitangi Tribunal, for example – are products of Crown sovereignty”.²¹²

This overarching Western framework is evidenced in many of the solution models that have been used to provide land-based redress thus far. The following solution models have been used: statutory vesting of fee simple title; statutory vesting and gifting back of sites of outstanding significance; statutory vesting of a riverbed or lakebed; statutory vesting of a reserve; overlay classifications; statutory acknowledgements; deeds of recognition; protocols; place-name changes; and creation of a Joint Advisory or Management Committee.²¹³ Whilst these solutions may be satisfactory to some Māori claimants, they nevertheless rest in a Western framework of land ownership. For example, the statutory vesting of a fee simple estate provides ownership (title) to the land, a concept that is foreign to tikanga Māori.²¹⁴ The statutory vesting of a riverbed or lakebed also rests heavily in Western notions of land ownership. Where Māori traditionally perceive the bed, banks and water of a river or lake to be one single entity, under the common law water cannot be owned.²¹⁵ Therefore, where iwi and hapū seek tribal authority

²⁰⁹ Klein, above n 35, at 101, 105, and 107 – 108; Law Commission, above n 35, at [47]; Toki, above n 35, at 200; Morris and Ruru, above n 35, at 49.

²¹⁰ Toki, above n 35, at 198.

²¹¹ See examples in Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

²¹² Ani Mikaere “Tikanga as the First Law of Aotearoa” (2007) 10 Yearbook of New Zealand Jurisprudence 24 at 26.

²¹³ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

²¹⁴ Klein, above n 35, at 107 – 108.

²¹⁵ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 103.

over the whole river or lake, the Crown will never offer this in a settlement.²¹⁶ It is appropriate here to mention the recent personification of Te Awa Tupua pursuant to the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017. Under that enactment, it is acknowledged that Te Awa Tupua is an “indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.”²¹⁷ The Act recognises that the Whanganui River includes the body of water that flows from its headwaters to the mouth on the Tasman Sea.²¹⁸ Despite this, and the promise of legal personhood, only parts of the river bed are vested in Te Awa Tupua.²¹⁹ This demonstrates the Crown’s reluctance to depart from common law principles of ownership and allow water to be owned, even if the owner is the water itself. As articulated by Moana Jackson, “[c]olonization demanded, and still requires, that Māori no longer source their right to do anything in the rules of their own law. Rather they have to have their rights defined by Pākehā; they have to seek permission from an alien word to do those things which their philosophy had permitted for centuries.”²²⁰

Legal personhood provides an alternative. Where some commentators denounce the legal personification of natural resources as a “totally ludicrous situation” and ask, “if a river or a park can be a legal person, can a legal person be a river or a park?”,²²¹ I suggest it is a creative way to recognise the Māori worldview of land ownership. Clearly, legal personality as a legal concept originated in western law, and is therefore somewhat rooted in a Western legal framework. However, it has never been applied to land, and recognises and gives effect to the Māori worldview that land is not property. As stated by Christopher Finlayson in the third reading of the Bill, declaring Te Urewera a legal person “reflects a Tūhoe view of Te Urewera as having an identity in its own right, not as a mere possession but a treasured place that requires respect and careful stewardship.”²²² This is very different to the English conception of land ownership,

²¹⁶ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 103.

²¹⁷ Section 12.

²¹⁸ Section 7.

²¹⁹ Sections 41(1) and 46(1)(a).

²²⁰ Moana Jackson “The Treaty and the Word: the Colonization of Māori Philosophy” in Graham Oddie & Roy Perrett (eds) *Justice, Ethics, and New Zealand Society* (Oxford University Press, Auckland, 1992) 1 at 6.

²²¹ John Sargeant “People now slip behind rivers in order of importance” *Stuff* (online ed, Wellington, March 20 2017).

²²² (23 July 2014) 700 NZPD 19463.

by which land is always property of people. Hence, as stated by Hon Dr Pita Sharples (Minister of Māori Affairs) “... the settlement is a profound alternative to the human presumption of sovereignty over the natural world”.²²³

Chapter Two analysed the Te Urewera Act 2014. In that chapter I suggested that Māori aspirations for rangatiratanga are limited by the extensive provisions contained in the Act. As an alternative to restricting how the land must be managed in legislation, giving Māori the capacity to govern personified land purely in accordance with tikanga Māori would be a huge movement towards fully embracing Māori law.

B - Legal Personality as a Compromise

Legal personality acts as a compromise between Māori and the Crown, by the fact that it cannot be owned by either party. Whilst the Crown has been willing to return land to iwi ownership in various Treaty settlements,²²⁴ the Crown is reluctant to do so for conservation land.²²⁵ Legal personality is therefore a particularly useful solution in that context, as demonstrated by the personification of Te Urewera. To Tūhoe, they cannot be separated from Te Urewera land: “we are all intertwined. Tūhoe and Te Urewera are one. It is incomprehensible to see them as separate.”²²⁶ However, as stated by Rino Tirikatene in the third reading of the Te Urewera Bill, “the Crown could never acknowledge or grant outright ownership to Tūhoe. Too much water has gone under our historical post-colonial bridge”.²²⁷ As a legal person, Te Urewera owns its own land.²²⁸ Therefore, the land is neither owned by the Crown, nor Tūhoe. It is also the first time a national park has been permanently removed from the national park legislation,²²⁹ and is “a clear

²²³ (23 July 2014) 700 NZPD 19481.

²²⁴ See Ngāti Apa (North Island) Claims Settlement Act 2010, ss 44 – 50; Ngati Toa Rangatira Claims Settlement Act 2014, ss 60 – 68; Ngati Tama Claims Settlement Act 2003, ss 28 – 33; and Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

²²⁵ Ruru “Tūhoe-Crown settlement – Te Urewera Act 2014”, above n 2.

²²⁶ Henare Tawhao Nikora, Personal communication 15/05/03 Rotorua as cited in Ngahuia Te Awekotuku and Linda Nikora “Nga Taonga o Te Urewera” (report prepared for the Waitangi Tribunal's Urewera District Inquiry, August 2003) (accessed at <www.ngaituhoe.com>) at 10.

²²⁷ (23 July 2014) 700 NZPD 19477.

²²⁸ Te Urewera Act 2014, s 89(1)(a).

²²⁹ Ruru “Tūhoe-Crown settlement – Te Urewera Act 2014”, above n 2.

and innovative way to recognise Tūhoe’s link to Te Urewera”.²³⁰ As demonstrated by Te Urewera, legal personality acts as a compromise between Māori and the Crown.

C - Legal Personality and the New Zealand Bill of Rights Act 1990

As discussed in Chapter One, the New Zealand Bill of Rights Act 1990 applies to all legal persons. Whilst the human rights implications do not appear to have been considered in creating Te Urewera, it may nevertheless have consequences for protecting Māori interests. Using Te Urewera as an example, this part will consider one way in which Māori interests could be protected by the New Zealand Bill of Rights Act 1990. Namely, the Act may provide a limited amount of protection against the repeal of the Te Urewera Act 2014. The Attorney-General must report to the House of Representatives where a Bill appears to be inconsistent with the rights of Te Urewera.²³¹ Repealing the Te Urewera Act 2014 may be inconsistent with the right not to be deprived of life,²³² as Te Urewera would cease to be a legal person if the Act was repealed. Whilst not a natural person, to Tūhoe Te Urewera is not just an area of land. Rather, Te Urewera is regarded as an ancestor,²³³ and has “an identity in and of itself, inspiring people to commit to its care”.²³⁴ However, even if the repeal of Te Urewera is inconsistent with its right not to be deprived of life, this does not necessarily mean the New Zealand Bill of Rights Act 1990 will protect Te Urewera against repeal. There is no legislative requirement for the House of Representatives to reject a Bill based on an inconsistency with the New Zealand Bill of Rights Act 1990. The only protection this procedure affords is to ensure the House of Representatives is aware of the inconsistency in the hope that the Bill will be amended.²³⁵

²³⁰ (23 July 2014) 700 NZPD 19477.

²³¹ Section 7.

²³² Section 8.

²³³ Toki, above n 35 at 200; Klein, above n 35, at 105; and Law Commission, above n 35, at [47].

²³⁴ Te Urewera Act 2014, s 3(3).

²³⁵ *Human Rights Law*, above n 83, at [BOR7.01].

D - Legal Personality and the Ability to Assert Rights

As discussed in Chapter One, legal personality affords an entity the ability to assert its rights. Personified land may therefore be able to bring proceedings against other persons in its own name. Conversely, legal persons may be sued or criminally prosecuted. The liability of personified land more generally, will be the sole focus of Chapter Four.

III - Comparison to Existing Land Ownership Models

This part will compare legal personality to two existing land ownership models: customary title and fee simple title. Customary title can be pursued in the courts,²³⁶ whereas fee simple title can be granted pursuant to a Treaty settlement with the Crown.²³⁷

A - Customary Title

Customary title is a common law concept recognising indigenous property rights.²³⁸ It was defined in *Te Runanganui O Te Ika Whenua Inc Society v Attorney-General* as “the rights over land and water enjoyed by the indigenous or established inhabitants of a country up to the time of its colonisation”.²³⁹ In Aotearoa New Zealand customary land has been given statutory recognition, defined by the Te Ture Whenua Māori Act 1993 as “land that is held by Māori in accordance with tikanga Māori”.²⁴⁰ Usually customary “title” refers to interests in land, and customary “rights” refers to traditional use rights.²⁴¹ The court in *Re Tipene* described these as “territorial” and “non-territorial” rights.²⁴² Territorial rights are equivalent to full ownership,²⁴³ whereas non-territorial

²³⁶ *Attorney-General v Ngati Apa*, above n 102, at [4]; *Re Tipene*, above n 102, at 573 – 574; and Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 243.

²³⁷ Ngāti Apa (North Island) Claims Settlement Act 2010, ss 44 – 50; Ngati Toa Rangatira Claims Settlement Act 2014, ss 60 – 68; Ngati Tama Claims Settlement Act 2003, ss 28 – 33; and Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 94.

²³⁸ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 142.

²³⁹ *Te Runanganui O Te Ika Whenua Inc Society v Attorney-General* [1994] NZLR 20 (CA) at 23.

²⁴⁰ Te Ture Whenua Māori Act 1993, s 129(2)(a).

²⁴¹ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 142.

²⁴² *Re Tipene*, above n 102, at [13].

²⁴³ *Re Tipene*, above n 102, at [13].

rights include traditional uses such as fishing, birding, taking berries and collecting firewood.²⁴⁴ Non-territorial or use rights can exist for an area of land without Māori having an interest in the underlying land itself.²⁴⁵ For example, in *Te Weehi v Regional Fisheries Officer*, it was established in evidence that Ngāi Tahu had customary fishing rights along the Motanau foreshore.²⁴⁶ Māori customary property was not affected by British sovereignty; “[c]ustomary interests are preserved by the common law until extinguished in accordance with the law.”²⁴⁷ Māori may claim customary property rights as an alternative cause of action to pursuing Treaty settlement.²⁴⁸

Customary title still sits within the Western framework of land ownership. As stated by Ani Mikaere, customary law is a common law doctrine defined by Pākehā, not Māori tikanga; “[t]hey are talking about rights that they have carefully defined. By defining them they control them.”²⁴⁹ This is true. However, acknowledging customary property through this common law doctrine allows tikanga Māori to be exercised over the land. Customary title is akin to ownership,²⁵⁰ which would give Māori the ability to exercise rangatiratanga over the land, and protect the land as kaitiaki. This allows for more autonomy than the current statutory regimes implementing legal personality allow for. However, as most customary land has been extinguished,²⁵¹ most claims will be for non-territorial or use rights.²⁵² Legal personality provides greater opportunity for Māori to exercise tikanga over their lands.

²⁴⁴ Waitangi Tribunal *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wai 145, 2003) at 16; *Re Tipene*, above n 102, at [15].

²⁴⁵ New Zealand Parliament “Overview of Customary Title” <www.parliament.nz>

²⁴⁶ *Te Weehi v Regional Fisheries Officer* [1986] 1 NZLR 680 (HC) at 693.

²⁴⁷ *Re Tipene*, above n 102, at [12].

²⁴⁸ *Attorney-General v Ngati Apa*, above n 102, at [88] – [90]; *Re Tipene*, above n 102, at [40]; and Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 243.

²⁴⁹ Mikaere, above n 212, at 27.

²⁵⁰ *Re Tipene*, above n 102, at [13]; and Morris, above n 68, at 75.

²⁵¹ Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 244 – 245; and Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks”, above n 68, at 197.

²⁵² Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi”, above n 95, at 245.

B - Fee Simple Title

Fee simple title is another option for recognising Māori rights to land. Legislation enacted pursuant to a Treaty settlement may transfer such ownership to Māori claimant groups.²⁵³ This part will evaluate how fee simple title as a land ownership model compares to legal personality for furthering Māori interests in land. An unencumbered fee simple title would give Māori claimant groups: the right to exclude others; ownership of things growing on the land or improvements; control and management of the site; and naming rights.²⁵⁴ Assuming future legal persons will be created in a similar manner to Te Urewera and Te Awa Tupua, the extensive statutory regime accompanying legal personality provides limited autonomy. Unlike fee simple title, existing legal personhood legislation does not allow exclusion of others, and stipulates how the land must be controlled and managed.²⁵⁵ An unencumbered fee simple title provides more autonomy than such a regime, allowing Māori to exercise rangatiratanga over the land and act as the land's kaitiaki in accordance with tikanga values. However, it is important to recognise that whilst this fee simple title can come unencumbered, sometimes it will be subject to restrictions.²⁵⁶ For example, the title transfer of volcanic cones/maunga in the Auckland region to Ngā Mana Whenua o Tāmaki Makaurau was subject to restrictions. The maunga cannot be alienated, mortgaged, or used as a security interest;²⁵⁷ and must retain their reserve status.²⁵⁸ Such restrictions limit the ability of Māori claimants to exercise complete autonomy over the land and may therefore not fulfil Māori aspirations for land ownership. Transferring ownership does not necessarily equate to transferring power.²⁵⁹ Further, the fee simple title does not align with the Māori worldview that land cannot be owned as legal personality does.²⁶⁰ Transferring title to Māori also does not act as a compromise. Gifting fee simple title to Māori may align one of the

²⁵³ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 116.

²⁵⁴ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 116.

²⁵⁵ Te Urewera Act 2014, ss 4(c) and 5(2); Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, s 46(2)(a).

²⁵⁶ Office of Treaty Settlements *Healing the past, building a future*, above n 97, at 116.

²⁵⁷ Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, s 41(3).

²⁵⁸ Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, s 41(4).

²⁵⁹ Ruru "Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand's National Parks", above n 68, at 200.

²⁶⁰ See Klein, above n 35, at 101, 105, and 107 – 108; Law Commission, above n 35, at [47]; Toki, above n 35, at 200; and Morris and Ruru, above n 35, at 49.

ways by which Māori traditionally claimed land, being “take tukua”, as this can be translated to right by gift.²⁶¹ However, tuku means more than just gifting; tuku created relations between the parties that would continue after the transfer.²⁶² This is very different to the western concept of gifting, where the transaction ends once the gift is complete. Whilst an unencumbered fee simple title may allow greater autonomy, legal personality better aligns with the Māori worldview.

IV - Conclusion

The aim of this chapter was to evaluate how the personification of land can further and protect Māori interests. As has been discussed, legal personhood aligns with the Māori worldview of land ownership, acts as a compromise between the Crown and Māori, and may subject the land to rights under the New Zealand Bill of Rights Act 1990. The latter half of the chapter compared legal personality to two existing models of land ownership: customary title and fee simple title. Assuming legal personality would be created using a similar statutory framework to the Te Urewera Act 2014, these existing models may provide Māori with more control and autonomy over land than legal personality would. However, legal personality better aligns itself with the traditional Māori worldview of land ownership. As previous redress often falls within a Western framework of land ownership, this is a significant advantage of legal personality.

²⁶¹ Rāwiri Taonui “Te ture – Māori and legislation” (20 June 2012) Te Ara - the Encyclopedia of New Zealand www.teara.govt.nz at 2.

²⁶² Williams, above n 114, at 4.

CHAPTER FOUR: LEGAL PERSONALITY IN THE COURTS

Early in this dissertation it was concluded that legal personality equates to being capable of rights and duties.²⁶³ This allows legal persons to both enforce their rights and have their duties enforced against them.²⁶⁴ Therefore, legal persons may theoretically be a party to proceedings, both criminal and civil.²⁶⁵ However, as legal persons have no mind or body of their own, establishing the actions or mental state required for liability may be challenging. Being a legal abstraction, legal persons must have designated persons that act on their behalf.²⁶⁶ As stated by Lord Reid:²⁶⁷

“A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person.”

This chapter will first evaluate whether personified land can be vicariously or directly liable for the actions of others. Secondly, I will consider whether personified land can be liable for criminal offences. Finally, I will evaluate the tortious liability of personified land and examine whether the elements of common land-based torts could be committed by land. If personified land can sue and be sued, and be criminally prosecuted, this will be an important consequence for Māori. It is also important to recognise that legal personhood may also allow land to form contractual relationships, and bring proceedings in contract law. However, this chapter will focus upon criminal and tortious liability.

²⁶³ See Chapter one “I – The Rights and Duties of Legal Persons”.

²⁶⁴ See Chapter one “I – The Rights and Duties of Legal Persons”.

²⁶⁵ See Chapter one “I – The Rights and Duties of Legal Persons”.

²⁶⁶ Williams, above n 114, at 363 – 364; and *Miglani v State of Uttarakhand*, above n 14, at 62.

²⁶⁷ *Tesco Supermarkets Ltd. v. Natrass* [1972] AC 153 (HL) at 170 as cited in *Trevor Ivory Ltd v Anderson*, above n 15, at 526 and *Meridian Global Funds Management Asia Ltd v Securities Commission* [1994] 2 NZLR 291 (CA) at 300.

I - Vicarious Liability

Vicarious liability involves fixing the liability of one person to another person.²⁶⁸ This form of liability is usually the basis for company liability in tort law,²⁶⁹ sometimes referred to respondent superior “let the master answer”.²⁷⁰ A general principle of vicarious liability in tort law, is that the servant must have actually committed a tort.²⁷¹ Vicarious liability can now be used in both criminal and civil law to fix a company with the liability of its agents,²⁷² with vicarious liability in criminal law deriving from, and being analogous to, the tortious principle of vicarious liability.²⁷³ An employment relationship is traditionally required for vicarious liability to be established, allowing an employer to be held liable for the actions of its employees,²⁷⁴ and is the only relationship that will give rise to vicarious liability in all circumstances.²⁷⁵ However, it has been suggested that a relationship akin to employment will also suffice,²⁷⁶ as would the relationship of principle and agent.²⁷⁷ In *S v Attorney-General* [2003] 3 NZLR 450, Tipping J considered employment and agency relationships to be the traditional categories of vicarious liability.²⁷⁸ However, in the minority on the following point, he explained that vicarious liability could still arise outside these categories if it was fair, just and reasonable.²⁷⁹ For the purpose of this dissertation, I will limit the application of vicarious liability to personified land, to that arising out of an employment or agency relationship.

²⁶⁸ *Siemer v Brown* [2014] NZHC 3175 at [119]; and Neil Hawke *Corporate Liability* (Sweet & Maxwell, London, 2000) at 68.

²⁶⁹ Hawke, above n 268, at 4.

²⁷⁰ H Lowell Brown “Vicarious Criminal Liability of Corporations for the Acts of their Employees and Agents” (1995) 41 Loy L Rev 279 at 283.

²⁷¹ Peter Hogg and Patrick Monahan *Liability of the Crown* (3rd ed, Carswell, Ontario, 2000) at 119.

²⁷² Hawke, above n 268, at 4 – 6; and Brown, above n 270, at 283.

²⁷³ Brown, above n 270, at 283.

²⁷⁴ *Auckland Council v Ewins* [2014] NZHC 1174 at [19]; *Siemer v Brown*, above n 268, at [120]; Stephen Todd “Vicarious Liability” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 1205 at 1206; and Luke McCarthy “Vicarious Liability in the Agency Context” (2004) 4 QUTLJ 1 at 1.

²⁷⁵ McCarthy, above n 274, at 1.

²⁷⁶ *Siemer v Brown*, above n 268, at [120]; Todd, above n 274, at 1206.

²⁷⁷ *S v Attorney-General* [2003] NZCA 149, [2003] 3 NZLR 450 at [68] – [70]; Todd, above n 274, at 1206; McCarthy, above n 274, at 4.

²⁷⁸ *S v Attorney-General*, above n 77, at [102] – [103].

²⁷⁹ *S v Attorney-General*, above n 77, at [102] – [103].

Vicarious liability could be used to hold personified land liable for the liabilities of its employees or agents. As personified land has no mind or body of its own, there must always be human actors acting on its behalf. These people may not be “employees” per say, but they could be considered akin to employees, or agents of the land. Considering Te Urewera, the Te Urewera Board was established “act on behalf of, and in the name of, Te Urewera”.²⁸⁰ The Board could therefore be regarded as an agent of Te Urewera. For vicarious liability to apply based on agency, the actions of the Board must be closely connected to the acts that it has been authorised to do.²⁸¹ The Te Urewera Act 2014 explicitly states that the Board is to act in the name of Te Urewera, and specifies a series of functions that it will carry out.²⁸² One of these functions is “to take any other action that the Board considers to be relevant and appropriate in achieving its purposes.” Given that the Board’s purpose is to “act on behalf of, and in the name of, Te Urewera” and to provide governance for Te Urewera,²⁸³ the Board appears to have very broad authority to act as agent for Te Urewera. It could be argued that as the Board is required to act in accordance with the Act and other lawful requirements,²⁸⁴ acting against any rule of law would be outside the scope of its authorisation and therefore Te Urewera should not be vicariously liable. However, for vicarious liability, unauthorised illegitimate actions taken by an agent can still be closely connected to the actions that the agent was authorised to do.²⁸⁵ If the Te Urewera Board is deemed to be an agent of Te Urewera, then Te Urewera could be held vicariously liable for its liabilities.

II - Direct Liability

A - Directing Mind and Will

Personified land could be directly liable for offences and torts by attributing the actions and mental state of the “directing mind and will” of the land, to the land itself. This principle has been

²⁸⁰ Te Urewera Act 2014, s 17(a).

²⁸¹ *Nathan v Dollars & Sense Ltd* [2008] NZSC 20, [2008] NZLR 557 at [32] – [35] and [44].

²⁸² Sections 17(a) and 18.

²⁸³ Section 17.

²⁸⁴ Section 19(2).

²⁸⁵ *Nathan v Dollars & Sense Ltd*, above n 281, at [34] – [38].

used for both companies and the Crown.²⁸⁶ Sometimes called the identification principle,²⁸⁷ it is different to vicarious liability because, rather than an individual being liable and then the legal person held responsible for it, the legal person itself is liable.²⁸⁸ It can be used for both tort and criminal liability.²⁸⁹ It was first adopted in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*,²⁹⁰ in which Lord Haldane stated the following:²⁹¹

“a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting; that person may be the board of directors itself”.

New Zealand subsequently adopted this doctrine.²⁹²

As land has no capacity to make decisions, there must be a person or group of persons managing the land on its behalf. In the case of Te Urewera, this is the Te Urewera Board, established to “act on behalf of, and in the name of, Te Urewera”.²⁹³ In *Lalit Miglani v State of Uttarakhand*, alongside declaring elements of an ecosystem legal persons, the Indian Court specified several persons to act as the human face of the legal persons.²⁹⁴ The “directing mind and will” of such guardians could be attributed to the personified land, in a similar manner as the

²⁸⁶ Hawke, above n 268, at 31; Maxwell Smith “Corporate Manslaughter in New Zealand: Waiting for a Disaster” (2016) 27 NZULR 402 at 404; and Hogg and Monahan, above n 271, at 316 – 317.

²⁸⁷ Hawke, above n 268, at 32; Smith, above n 286, at 403 – 404; and Campbell, above n 21, at 34.

²⁸⁸ *S v Attorney-General*, above n 277, at [98] – [99]. *Tesco Supermarkets Ltd. v Natrass*, above n 267, at 170 as cited in *Trevor Ivory Ltd v Anderson*, above n 15, at 526 and *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 267, at 300; *Nordik Industries Ltd v Regional Controller of Inland Revenue* [1976] 1 NZLR 194 at 199; *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 at 33; *Attorney General's Reference (No 2 of 1999)* [2001] BCC 210 (CA) at 219; and Hawke, above n 268, at 6.

²⁸⁹ Cf *Tesco Supermarkets Ltd. v Natrass*, above n 267, and *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 (HL); Ford and Austin, above n 13, at 596; and Hawke, above n 268, at 31.

²⁹⁰ *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*, above n 289; *Linework Ltd v Department of Labour* [2001] 2 NZLR 639 (CA) at [27]; Kristen Wong “Breaking the Cycle: the Development of Corporate Criminal Law” (LLB(Hons) Dissertation, University of Otago, 2012) at 18; Ford and Austin, above n 13, at 596; and Hawke, above n 268, at 32 - 33.

²⁹¹ *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd*, above n 289, at 713 - 714 as cited in *Lee v Lee's Air Farming Limited*, above n 25, at 398.

²⁹² *Nordik Industries Ltd v Regional Controller of Inland Revenue*, above n 288, at 199; and Wong), above n 290, at 19.

²⁹³ Te Urewera Act 2014, s 17.

²⁹⁴ *Miglani v State of Uttarakhand*, above n 14, at 63.

“directing mind and will” of a board of directors can be for a company.²⁹⁵ In *Tesco Supermarkets Ltd v Natrass*, the House of Lords concluded that precautions taken by the board of directors counted as precautions taken by the company itself.²⁹⁶ Attributing the actions and mental state of a guardian or board could allow personified land to be liable for torts and offences.

B - Departure from the Directing Mind and Will Doctrine

Following the Privy Council decision of *Meridian Global Funds Management Asia Ltd v Securities Commission*,²⁹⁷ the “directing mind and will” principle may no longer be the predominant way to directly attribute actions and mental states to legal persons in New Zealand.²⁹⁸ This was an appeal from the New Zealand Court of Appeal.²⁹⁹ Lord Hoffman explained that, rather than always using the “directing mind and will” principle, it is just one example of the rules of attribution.³⁰⁰ As such, the Privy Council attributed a mental state to the company on the basis of agency rather than using the “directing mind and will” principle.³⁰¹ The Supreme Court of New Zealand followed Lord Hoffman’s approach in *Cullen v R*, explaining that the “directing mind and will” principle will not necessarily be required in every case.³⁰² In *Linework Ltd v Department of Labour*, the New Zealand Court of Appeal attributed the actions of a foreman to a company, because the offence concerned safety of employees on a worksite, which in practice was the responsibility of the foreman rather than higher management.³⁰³

This development may allow the actions and mental state of individuals other than a guardian or board to be directly attributed to personified land. Considering Te Urewera, the chief-

²⁹⁵ *Brooks v New Zealand Guardian Trust Co Ltd* [1994] 2 NZLR 134 (CA) at 140; *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd*, above n 289, at 713 - 714 as cited in *Lee v Lee’s Air Farming Limited*, above n 25 (CA) at 398; *Tesco Supermarkets Ltd v Natrass Ltd*, above n 267, at 170 as cited in Ford and Austin, above n 13, at 596 – 597.

²⁹⁶ *Tesco Supermarkets Ltd v Natrass*, above n 267, as cited in *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 3 NZLR 7 (PC) at 13.

²⁹⁷ *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296.

²⁹⁸ Campbell, above n 21, at 54.

²⁹⁹ *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 267.

³⁰⁰ *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296, at 15 – 16; and Campbell, above n 21, at 31.

³⁰¹ *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296, at 16; and Hawke, above n 268, at 41.

³⁰² *Cullen v R* [2015] NZSC 73, [2015] 1 NZLR 715 (CA) at [37].

³⁰³ *Linework Ltd v Department of Labour*, above n 290, at [23].

executive and Director-General are responsible for the operational management of Te Urewera,³⁰⁴ which includes the training of warranted officers to exercise compliance and enforcement powers and duties.³⁰⁵ Should unlawful activity be committed in relation to compliance and enforcement, it may be that the actions and mental state of such individuals could be attributed to Te Urewera.

III - Criminal Prosecution

Personified land could be criminally prosecuted through either vicarious liability, or by directly attributing the actions of individuals to the land. This is how companies can be prosecuted.³⁰⁶ Ships, being a legal person, are also capable of criminal prosecution; *United States v Schooner Little Charles* concerned “a proceeding against the vessel for an offence committed by the vessel”.³⁰⁷ It is also thought that the Crown can be prosecuted if the words of an offence allow it.³⁰⁸ Further, both Land Information New Zealand (LINZ) and the Commerce Commission have stated in their prosecution guidelines that they may bring criminal proceedings against legal persons.³⁰⁹ However, an offence must actually be capable of being committed by a legal person for personified land to be liable. Some provisions anticipate this; s 340(2) of the Resource Management Act 1991 provides a separate defence for legal persons to offences committed under the Act.³¹⁰ Most offences under the Crimes Act 1961 are worded as “every one...who”. As it was established in *Cullen v R* that this wording can apply to companies,³¹¹ it is likely a court would apply the same reasoning to personified land. Conversely, some offences can only be committed by natural persons; in New Zealand, murder and manslaughter can only be committed by natural persons.³¹² Some offences also have no application to legal persons given their

³⁰⁴ Te Urewera Act 2014, s 50(1).

³⁰⁵ Section 71(2).

³⁰⁶ Hawke, above n 268, at 6.

³⁰⁷ *United States v The Little Charles*, above n 18, at 982.

³⁰⁸ See Hogg and Monahan, at n 271, at 314 – 315.

³⁰⁹ Commerce Commission New Zealand *Criminal Prosecution Guidelines* (October 2013) at cl 30; Land Information New Zealand *Prosecution Policy* (August 2017) at 4.

³¹⁰ Resource Management Act 1991, s 340(2).

³¹¹ *Cullen v R*, above n 302, at [35].

³¹² Crimes Act 1961, ss 158, 160, 167, 168 and 171; *Cullen v R*, above n 302, at [35].

penalty.³¹³ For example, as only natural persons can be imprisoned, where imprisonment is the only penalty available, the offence cannot apply to non-natural persons.³¹⁴ However, where the penalty includes a fine, legal persons can be liable.³¹⁵

In the United Kingdom, vicarious liability is typically only used for regulatory offences that do not require an element of mens rea.³¹⁶ As explained by Atkin J in *Moussell Brothers Ltd v London and North Western Railway Co*: “prima facie a principal is not to be made criminally responsible for the acts of his servants” unless it is the intention of the legislature.³¹⁷ The English Court of Appeal in *R v Qureshi* held that the phrase “does acts” in s 1(3A)(a) of the Protection from Eviction Act 1977 required actual participation of the defendant, excluding vicarious liability.³¹⁸ Similarly, in *R v HM Coroner for East Kent, ex parte Spooner*, it was held that for a company to be liable for manslaughter, the elements of the offence must be committed by those who are the embodiment of the company, not vicariously.³¹⁹ Interestingly, vicarious liability is the most dominant form of corporate criminal liability in the United States.³²⁰ Nevertheless, in most common law jurisdictions vicarious liability has been rejected for offences requiring an assessment of mens rea.³²¹ Rather, direct liability is the traditional common law mechanism for attributing primary liability to a company.³²² This was recognised in *Nordik Industries Ltd v Regional Controller of Inland Revenue*, in which the Napier Supreme Court cited *Tesco Supermarkets Ltd v Natrass* and stated that “[n]ormally, if a company is criminally liable the liability is not vicarious; it arises from the doctrine of identification.”³²³ As stated in *Cullen v R*:³²⁴

³¹³ *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296, at 12; Hogg and Monahan, above n 271, at 314 – 315.

³¹⁴ Hogg and Monahan, above n 271, at 314 – 315.

³¹⁵ Hogg and Monahan, above n 271, at 315.

³¹⁶ Hawke, above n 268, at 6; and Wong, above n 290, at 16 – 17.

³¹⁷ *Moussell Brothers Ltd v London and North Western Railway Co* [1917] 2 KB 836 at 845 as cited in *R v Qureshi (Mohammed)* [2011] EWCA Crim 1584, [2011] HLR 34 at 553.

³¹⁸ *R v Qureshi (Mohammed)*, above n 317, at 368.

³¹⁹ *R v HM Coroner for East Kent, ex parte Spooner* (1989) 88 Cr App R 10 at 16 as cited in *Attorney General’s Reference (No 2 of 1999)*, above n 288, at 217 – 218.

³²⁰ Wong, above n 290, at 13.

³²¹ Wong, above n 290, at 16.

³²² Smith, above n 286, at 404.

³²³ *Nordik Industries Ltd v Regional Controller of Inland Revenue*, above n 288, at 199; *Tesco Supermarkets Ltd v Natrass*, above n 267.

³²⁴ *Cullen v R*, above n 302, at [36].

“Where a non-natural person is charged with an offence, the actions and states of mind required by the terms of the offence are actions and states of mind of human actors which are attributed to the company.”

The Supreme Court in that case agreed with Lord Hoffman’s analysis in *Meridian Global Funds Management Asia Ltd v Securities Commission*, and explained that the question of whose actions and states of mind will count as those of non-natural persons will depend upon interpretation of the offence.³²⁵ Applying this to personified land, it means that the land can in theory be liable for criminal offences if the actions and mental state of an individual can be attributed to the personified land. The application of direct liability to personified land was discussed earlier in this chapter.

IV - Tortious Liability

This part will examine whether personified land can sue and be sued in tort law. As discussed, vicarious liability is used for most claims against companies in tort law.³²⁶ However, a “master” can also be directly liable in tort law in certain circumstances.³²⁷ For example, *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd* was a civil case concerning a breach of the Merchant Shipping Act 1984.³²⁸ In that case Lord Haldane held that “actual fault or privity” excluded vicarious liability.³²⁹ The application of both these concepts to personified land has been considered earlier in this chapter. This part will examine whether personified land could be liable, or bring proceedings against others, for the torts of trespass and *Rylands v Fletcher*. If it is concluded that land can bring proceedings against wrongdoers directly, this would better protect Māori land from harm.

³²⁵ *Cullen v R*, above n 302, at [36].

³²⁶ *Siemer v Brown*, above n 268, at [120]; Todd, above n 274, at 1206.

³²⁷ Hogg and Monahan, above n 271, at 115.

³²⁸ *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd*, above n 289; *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296, at 14; and Merchant Shipping Act 1894, s 502.

³²⁹ *Lennard’s Carrying Co Ltd v Asiatic Petroleum Co Ltd*, above n 289; *Meridian Global Funds Management Asia Ltd v Securities Commission*, above n 296.

A - Trespass

Trespass requires an unjustified intrusion by one party upon land which is in the possession of another.³³⁰ The intrusion must be voluntary.³³¹ This part will examine whether these elements could be established for personified land, as either the plaintiff or the defendant.

1 - Land as a plaintiff in trespass

To succeed in trespass, the personified land must be in possession of the land.³³² To be in possession, one must have an intention to possess the land and also control over the land to the exclusion of others.³³³ There should be no issue with intention, as it is usually inferred from control.³³⁴ Unless there is evidence to the contrary, the owner of the land will be deemed to be in possession.³³⁵ Considering Te Urewera, the personified land is the registered proprietor of its own land.³³⁶ However, “all persons performing functions and exercising powers under this Act must act so that the public has freedom of entry and access to Te Urewera”.³³⁷ If the public has freedom of entry, the personified land cannot be said to have control over the land to the exclusion of others. The Te Urewera Board, acting on behalf of the land,³³⁸ can make bylaws to exclude people from parts of Te Urewera.³³⁹ Te Urewera may therefore be able to succeed in trespass over such areas. Assuming future areas of personified land are dictated by similar

³³⁰ *Lakes Edge Developments Ltd v Kawarau Village Holdings Ltd* [2017] NZCA 205; [2017] 3 NZLR 336 at [39]; Bill Atkin “Trespassing on Land” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 481 at 482.

³³¹ Atkin “Trespassing on Land”, above n 330, at 482.

³³² *Lakes Edge Developments Ltd v Kawarau Village Holdings Ltd*, above n 330, at [39]; Atkin “Trespassing on Land”, above n 330, at 482.

³³³ *J A Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419 at [40] as cited in *Mainline Private Hire Ltd v Nolan* [2011] EWCA Civ 189 [2011] ER (D) 29 (Mar) at [2]; *Moore v MacMillan* [1977] 2 NZLR 81 (SC) at 88; Atkin “Trespassing on Land”, above n 330, at 488.

³³⁴ Atkin “Trespassing on Land”, above n 330, at 488.

³³⁵ *Bocardo SA v Star Energy UK Onshore Ltd and another* [2010] UKSC 35, [2010] All ER (D) 975 at [30]; Atkin “Trespassing on Land”, above n 330, at 489.

³³⁶ Te Urewera Act 2014, s 89(1).

³³⁷ Section 5(2).

³³⁸ Section 17(a).

³³⁹ Section 70.

legislation to Te Urewera, whether personified land can sue in trespass will depend upon whether the legal person can exclude the public.

2 - Land as a defendant in trespass

Trespass requires a voluntary act of intrusion,³⁴⁰ making it difficult for land to be sued in trespass. As discussed, it may be possible to find personified land vicariously liable through trespass committed by its employees or those akin to employees.³⁴¹ Alternatively, the mental state of other individuals could be directly attributed to personified land. An intrusion occurs with the slightest encroachment onto a plaintiff's land;³⁴² "if the defendant places a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it."³⁴³ In terms of personified land, this "foot" could include rocks, trees, or water and an intrusion could occur if a tree fell across the boundary into neighbouring property. However, the intrusion must be voluntary,³⁴⁴ and such an accidental incident would not suffice. For example, a person that falls onto the plaintiff's land after having a seizure will not commit a trespass.³⁴⁵ As alluded to, the mind-set of a board could be attributed to the land. Perhaps, where a board acting on behalf of the land decides to fell trees onto neighbouring property, the voluntariness of the board could be attributed to personified land. Alternatively, the voluntariness of the supervisors of the tree felling operation could be attributed to the land.

B - Rylands v Fletcher

As stated in *Fletcher v Rylands*, "... the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural

³⁴⁰ Atkin "Trespassing on Land", above n 330, at 482.

³⁴¹ *Siemer v Brown*, above n 268, at [120]; Todd, above n 274, at 1206; McCarthy, above n 274, at 1.

³⁴² *Macnab v Richardson* [2008] EWCA Civ 1631 [2009] All ER (D) 190 at [19].

³⁴³ *Ellis v Loftus Iron Co* (1874) LR 10 CP 10 (Comm Pleas) at 12 as cited in Atkin "Trespassing on Land", above n 330, at 494.

³⁴⁴ Atkin "Trespassing on Land", above n 330, at 482.

³⁴⁵ Atkin "Trespassing on Land", above n 330, at 482.

consequence of its escape”.³⁴⁶ On appeal, the House of Lords affirmed this decision and added that the use must be a non-natural use of the defendant’s land.³⁴⁷ It was later affirmed that a defendant will only be liable for damage that is the reasonably foreseeable consequence of the escape.³⁴⁸ This part will examine whether these elements can be established for personified land, as either the plaintiff or the defendant.

1 - Land as a plaintiff in *Rylands v Fletcher*

Personified land should be able to bring a proceeding against another under *Rylands*. The elements all relate to the defendant and the defendant’s land, meaning there would be no difference if personified land were the plaintiff. The only difference would relate to an award of damages, which will be discussed subsequently in this chapter.

2 - Land as a defendant in *Rylands v Fletcher*

Personified land will only be liable for damage that is the reasonably foreseeable consequence of an escape.³⁴⁹ As the term “reasonably foreseeable” is used, the courts will employ an objective test and there shouldn’t be issues with the fact that land cannot actually foresee something. However, it requires that the defendant itself should have reasonably foreseen the damage.³⁵⁰ For example, in *Hamilton v Papakura District Council & Anor*, the court concluded that “the damage complained of was not reasonably foreseeable by Watercare” Services Ltd, the defendant.³⁵¹ This could be problematic because land cannot reasonably foresee anything. However, in both *Hamilton* and *Cambridge Water Co*, the fact that the defendant was a legal person (a company) created no hurdle.³⁵² In *Cambridge Water Co*, Lord Goff considered the

³⁴⁶ *Fletcher v Rylands* (1866) LR 1 Ex 265 (Exch Ch) at 279 – 280.

³⁴⁷ *Rylands v Fletcher* (1868) LR 3 HL 330 (HL) at 339.

³⁴⁸ *Cambridge Water Co Ltd v Eastern Counties Leather plc* [1994] 2 AC 264 (HL) ([1994] Env. L.R. 105 at 124).

³⁴⁹ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 124; *Hamilton v Papakura District Council* [2000] 1 NZLR 265 at [76].

³⁵⁰ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 124.

³⁵¹ *Hamilton v Papakura District Council*, above n 349, at [2] and [77].

³⁵² *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348; *Hamilton v Papakura District Council*, above n 349.

foreseeability of “a reasonable supervisor at E.C.L.”,³⁵³ “a reasonable supervisor employed by E.C.L.”³⁵⁴, or “those responsible at E.C.L.”.³⁵⁵ Lord Goff does not explain whether the liability of such a supervisor is being vicariously attributed to E.C.L., or the foreseeability of a reasonable supervisor is being directly attributed to E.C.L. I would suggest the latter is true, as vicarious liability is never mentioned, and the reasonable foreseeability of E.C.L. is referred to directly: “E.C.L. could be held liable... after such damage had become foreseeable by E.C.L.”³⁵⁶ In light of these cases, it is likely that personified land could reasonably foresee something, if the individual responsible ought reasonably to have foreseen it.

The thing that escapes must be brought onto the land,³⁵⁷ or, as with the escape of fire, be created by a thing brought onto the land.³⁵⁸ This means that personified land will not be liable for the escape of things that occur naturally on the land, such as a rock-fall, flooded river or falling trees. Personified land could only be liable under Rylands if materials were brought onto the land that were not naturally there. The use of the land must also be non-natural.³⁵⁹ In *Rickards v Lothian* this was defined as:³⁶⁰

“some special use bringing with it increased danger to others, and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community.”

New Zealand cases have since focussed upon whether there is inherent danger in the activity.³⁶¹ Therefore, whether an activity carried out upon personified land constitutes a non-natural use will depend, like for any other area of land, upon whether it is inherently dangerous. Such uses

³⁵³ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 110.

³⁵⁴ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 113.

³⁵⁵ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 128.

³⁵⁶ *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 127.

³⁵⁷ *Fletcher v Rylands*, above n 346, at 279 – 280; Bill Atkin “The Rule in Rylands v Fletcher” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 591 at 592.

³⁵⁸ See *New Zealand Forest Products Ltd and Another v O’Sullivan* [1974] NZLR 80 (SC).

³⁵⁹ *Rylands v Fletcher*, above n 347, at 339; and Atkin “The Rule in Rylands v Fletcher”, above n 357, at 599.

³⁶⁰ *Rickards v Lothian* [1913] AC 263 (PC) at 280; and Atkin “The Rule in Rylands v Fletcher”, above n 357, at 600.

³⁶¹ *New Zealand Forest Products Ltd and Another v O’Sullivan*, above n 358, at 85 – 87; and Atkin “The Rule in Rylands v Fletcher”, above n 357, at 600.

could include the bulk storage of chemicals on the land (that subsequently escaped), as was the case in *Cambridge Water Co Ltd v Eastern Counties Leather plc*.³⁶²

V - Compensation

If personified land can successfully sue a wrongdoer, the measurement of damages may be better than if a landowner was the plaintiff. According to Christopher Stone, recognising the legal personality of land would allow it to bring proceedings in its own name, have injury to the land considered in determining whether to grant relief, and have compensation issued to the benefit of the land itself.³⁶³ As discussed in Chapter One, the last factor is important because it means that if the land succeeded in suing another party, the amount of damages issued will account for the actual damage to the land. Generally, a party will only receive compensatory damages for losses suffered by the party itself.³⁶⁴ Therefore, if personified land itself can bring proceedings against another for damaging the land, any compensation issued will better reflect that damage than if a land owner brought proceedings. As explained in Chapter One, damage to the land itself may be much more than damage to a land owner, as an owner will not suffer the full environmental impact upon the land.³⁶⁵ Further, as compensation would be issued to the land itself, it will be used to benefit the land. Therefore, by bestowing Māori land with legal personality, the land will be better protected from harm. As Māori have a deep connection with land, it follows that this will work to further Māori interests too.

Drawing upon Te Urewera as an example, the Te Urewera Board is responsible for the rights, powers, duties and liabilities of Te Urewera.³⁶⁶ Therefore, any compensation received by Te Urewera will be the responsibility of the Board, as will any liabilities. Whilst the Board has a

³⁶² *Cambridge Water Co Ltd v Eastern Counties Leather plc*, above n 348, at 130.

³⁶³ Stone, above n 18, at 458.

³⁶⁴ *Napier Tool & Die Ltd v Oraka Technologies Ltd* [2016] NZCA 554, [2017] 2 NZLR 611 at [1].

³⁶⁵ Stone, above n 18, at 462.

³⁶⁶ Te Urewera Act 2014, s 11(2).

budget,³⁶⁷ if it cannot meet its liabilities then the Minister of Finance, Minister of Conservation, and the trustees, may provide assistance.³⁶⁸

VI - Conclusion

The focus of this chapter was to explain how personified land could sue, be sued, and be subject to criminal prosecution. This built on the conclusions reached earlier in the dissertation, that theoretically legal persons can enforce their rights and be subject to enforcement of their duties. To fulfil the elements of liability, the actions and mental state of other persons must be attributed to the legal person in some way. Assuming the wording and the penalty of an offence allows it, personified land could be criminally prosecuted directly by attributing the actions and mental state of other individuals to the legal person. In tort law, personified land is more likely to be liable vicariously. Despite this, there may still be difficulties in personified land fulfilling the elements of various torts, both as a defendant and as a plaintiff. However, should personified land be successful as a plaintiff in tort law, having personality allows damages to be calculated and paid to the benefit of the land itself. Acquiring personality enables areas of land to be party to legal proceedings.

³⁶⁷ Section 38.

³⁶⁸ Section 97.

CONCLUSION

Previous land ownership models have typically sat within a western framework of property ownership. For example, fee simple title gives legal effect to the western notion of transferrable property ownership. Māori do not view land in this manner; land is traditionally regarded as ancestral rather than a commodity to be owned by people. Whilst customary title allows land to be utilised in accordance with tikanga Māori, this concept originates in the common law and there are few areas of customary land left in Aotearoa New Zealand. Placing land in a western legal system of property ownership suppresses the Māori perception of land as having a distinct life; colonisation has often forced Māori to suppress their tikanga.

Legal personality provides an alternative. This dissertation aimed to evaluate how the personification of land could further Māori aspirations for land ownership. The Te Urewera Act 2014 both legally personified Te Urewera and provided an extensive statutory framework to govern its management, a framework likely to be adopted for future personification of land. Such a framework may not completely embrace Māori rangatiratanga aspirations, as it does not allow for complete autonomy to be exercised over the land. The primary way by which legal personification furthers Māori aspirations is through its alignment with the Māori worldview; personification gives legal recognition to traditional Māori understandings of nature. With the added benefit of being a compromise between the Crown and Māori, legal personality presents a worthwhile alternative to traditional ownership models.

Legal personality has been equated to being capable of rights and duties. Such rights and duties are enforceable in the courts. Therefore, bestowing land with legal personhood allows the land to sue, be sued, and be subject to criminal prosecution. As land has no mind or body of its own, establishing the elements required for liability may be difficult. However, if land can bring proceedings against another for infringing its rights, damages will be calculated for and delivered to the benefit of the land itself. This would allow Māori to better protect their land from harm.

Overall, the operation of legal personality will be dictated by the statutory framework by which it is created. The main way by which legal personality furthers Māori aspirations for land ownership is through its alignment with the Māori worldview. Given that existing land ownership models have typically sat within western concepts of property ownership, in this manner the personification of land is undoubtedly revolutionary.

BIBLIOGRAPHY

I Cases

A New Zealand

Attorney-General v Chapman [2011] NZSC 110, [2012] 1 NZLR 462.

Attorney-General v Ngati Apa [2003] 3 NZLR 643 (CA).

Attorney General's Reference (No 2 of 1999) [2001] BCC 210 (CA).

Auckland Council v Ewins [2014] NZHC 1174.

Brooks v New Zealand Guardian Trust Co Ltd [1994] 2 NZLR 134 (CA).

Cullen v R [2015] NZSC 73, [2015] 1 NZLR 715.

Hamilton v Papakura District Council (CA) [2000] 1 NZLR 265.

Lakes Edge Developments Ltd v Kawarau Village Holdings Ltd [2017] NZCA 205, [2017] 3 NZLR 336.

Lee v Lee's Air Farming Limited [1959] NZLR 393 (CA).

Lee v Lee's Air Farming Limited [1961] NZLR 325 (PC).

Linework Ltd v Department of Labour [2001] 2 NZLR 639 (CA).

Marlborough District Council v Altimarloch Joint Venture Ltd [2012] NZSC 11, [2012] 2 NZLR 726.

Meridian Global Funds Management Asia Ltd v Securities Commission [1994] 2 NZLR 291 (CA).

Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 3 NZLR 7 (PC).

Minister of Conservation v Māori Land Court [2008] NZCA 564, [2009] 3 NZLR 465.

Moore v MacMillan [1977] 2 NZLR 81 (SC).

Napier Tool & Die Ltd v Oraka Technologies Ltd [2016] NZCA 554, [2017] 2 NZLR 611.

Nathan v Dollars & Sense Ltd [2008] NZSC 20, [2008] NZLR 557.

New Zealand Forest Products Ltd v O'Sullivan [1974] NZLR 80 (SC).

New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641 (CA).

Nordik Industries Ltd v Regional Controller of Inland Revenue [1976] 1 NZLR 194 (SC).

Re Arahi Properties Ltd [1989] 4 NZCLC 64,884 (HC).

Re Tipene [2016] NZHC 3199 [2017] NZAR 559.

S v Attorney-General [2003] NZCA 149, [2003] 3 NZLR 450.

Siemer v Brown [2014] NZHC 3175.

Steel & Tube Holdings Ltd v Lewis Holdings Ltd [2016] NZCA 366, (2016) 11 NZCLC 98-045.

Te Heuheu Tukino v Aotea District Māori Land Board [1941] NZLR 590 (PC).

Te Runanganui O Te Ika Whenua Inc Society v Attorney-General [1994] NZLR 20 (CA).

Te Weehi v Regional Fisheries Officer [1986] 1 NZLR 680 (HC).

Trevor Ivory Ltd v Anderson [1992] 2 NZLR 517 (CA).

B *England and Wales*

Bocardo SA v Star Energy UK Onshore Ltd [2010] UKSC 35, [2010] All ER (D) 975.

Cambridge Water Co Ltd v Eastern Counties Leather plc [1994] 2 AC 264 (HL).

Fletcher v Rylands (1866) LR 1 Ex 265 (Exch Ch).

Macnab v Richardson [2008] EWCA Civ 1631 [2009] All ER (D) 190.

Mainline Private Hire Ltd v Nolan [2011] EWCA Civ 189 [2011] ER (D) 29 (Mar).

R v Qureshi (Mohammed) [2011] EWCA Crim 1584, [2011] 2 Cr App R 25 ([2011] HLR 34).

Rickards v Lothian [1913] AC 263 (PC).

Rylands v Fletcher (1868) LR 3 HL 330 (HL).

Salomon v A Salomon & Co Ltd [1897] AC 22 (HL).

Tesco Supermarkets Ltd v Natrass [1972] AC 153 (HL).

C *India*

Miglani v State of Uttarakhand HC Uttarakhand Writ Petition (PIL) No.140 of 2015,
March 30 2017.

Salim v State of Uttarakhand HC Uttarakhand Writ Petition (PIL) No.126 of 2014, March
20 2017.

D *United States*

The Malek Adhel 43 US 210 (1844).

United States v The Little Charles 26 F Cas 979 (CCD Va 1818).

II **Legislation**

A *New Zealand*

Companies Act 1993.

Companies Amendment Act (No. 2) 1983.

Crimes Act 1961.

Crown Entities Act 2004.

Crown Minerals Act 1991.

Limited Partnerships Act 2008.

National Parks Act 1980.

New Zealand Bill of Rights Act 1990.

Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

Ngāi Tahu Claims Settlement Act 1998.

Ngāti Apa (North Island) Claims Settlement Act 2010.

Ngāti Awa Claims Settlement Act 2005.

Ngati Tama Claims Settlement Act 2003.

Ngati Toa Rangatira Claims Settlement Act 2014.

Resource Management Act 1991.

State-Owned Enterprises Act 1986.

Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

Te Ture Whenua Māori Act 1993.

Te Urewera Act 2014.

Treaty of Waitangi Act 1975.

B *England and Wales*

Merchant Shipping Act 1894.

III Treaties

Treaty of Waitangi (Tiriti o Waitangi), Article the Second.

IV Books and Chapters in Books

Bill Atkin “The Rule in Rylands v Fletcher” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 591.

Bill Atkin “Trespassing on Land” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 481.

Neil Campbell “Corporate Personality” in Peter Watts, Neil Campbell and Christopher Hare *Company Law in New Zealand* (2nd ed, LexisNexis, Wellington, 2016) 23.

HAI Ford and RP Austin *Ford and Austin’s Principles of Corporations Law* (7th ed, Butterworths, Australia, 1995).

Daniel Greenberg (ed) *Jowitt’s Dictionary of English Law* (3rd ed, Sweet & Maxwell, London, 2010)

Neil Hawke *Corporate Liability* (Sweet & Maxwell, London, 2000).

Peter Hogg and Patrick Monahan *Liability of the Crown* (3rd ed, Carswell, Ontario, 2000).

Moana Jackson “The Treaty and the Word: the Colonization of Māori Philosophy” in Graham Oddie & Roy Perrett (eds) *Justice, Ethics, and New Zealand Society* (Oxford University Press, Auckland, 1992) 1.

Peter Nygh and Peter Butt (eds) *Butterworths Australian Legal Dictionary* (Butterworths, Australia, 1997).

Jacinta Ruru “Te Tiriti o Waitangi/the Treaty of Waitangi” in Jacinta Ruru, Paul Scott and Duncan Webb (eds) *The New Zealand Legal System: Structures and Processes* (6th ed, LexisNexis, Wellington, 2016) 213.

John Salmond *Jurisprudence* (5th ed, Stevens and Haynes, London, 1916) at 181.

Stephen Todd “Vicarious Liability” in Stephen Todd (ed) and others *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, New Zealand, 2016) 1205.

Glanville Williams *Salmond on Jurisprudence* (11th ed, Sweet & Maxwell, London, 1957).

V Journal Articles

H Lowell Brown “Vicarious Criminal Liability of Corporations for the Acts of their Employees and Agents” (1995) 41 Loy L Rev 279.

Arthur Corbin “Legal Analysis and Terminology”(1919 - 1920) 29(2) Yale LJ 163.

Joshua Greenberg and Ellen Brotman “Strict Vicarious Criminal Liability for Corporations and Corporate Executives: Stretching the Boundaries of Criminalization” (2014) 51 Am Crim L Rev 79.

Charles Hawksley and Richard Howson “Tino Rangatiratanga and Mana Motuhake: Nation, state and self-determination in Aotearoa New Zealand” (2011) 7(3) AlterNative: An International Journal of Indigenous Peoples 247.

Richard Hill “People, land and the struggle for rangatiratanga/ autonomy in New Zealand” (2012) 19 Identities: Global Studies in Culture and Power 26.

Ulrich Klein “Belief-Views on Nature — Western Environmental Ethics and Māori World Views” (2000) 4 NZJEL 81.

Luke McCarthy “Vicarious Liability in the Agency Context”(2004) 4 QUTLJ 1.

Janet McLean “The Crown in Contract and Administrative Law” (2004) 24 OJLS 129.

Ani Mikaere “Tikanga as the First Law of Aotearoa” (2007) 10 Yearbook of New Zealand Jurisprudence 24.

James Morris and Jacinta Ruru “Giving Voice to Rivers: Legal Personality as a Vehicle for Recognising Indigenous Peoples’ Relationships to Water” (2010) 14(2) AILR 49.

Renee Rewi and Torivio Fodder “Unlocking Māori Potential Through Good Māori Governance Practices” (2013) 21 Wai L Rev 154

Mere Roberts and others “Kaitiakitanga: Māori perspectives on conservation” (1995) 2 Pacific Conservation Biology 7.

Jacinta Ruru “Tūhoe-Crown settlement – Te Urewera Act 2014” (2014) October Māori LR <Māorilawreview.co.nz>.

Giora Shapira “Ultra Vires: Not quite the end” [1985] NZLJ 124 at 126.

Maxwell Smith “Corporate Manslaughter in New Zealand: Waiting for a Disaster” (2016) 27 NZULR 402.

SM Solaiman “Legal personality of robots, corporations, idols and chimpanzees: a quest for legitimacy” [2017] 2 AI&L 156.

Christopher Stone “Should Trees Have Standing? – Toward Legal Rights for Natural Objects” (1972) 45 S Cal L Rev 450.

Mick Strack “Land and rivers can own themselves” (2017) 9(1) IJLBE 4.

Valmaine Toki “Adopting a Māori Property Rights Approach to Fisheries” (2010) NZJEL 197.

Stephanie Vieille “Māori Customary Law: A Relational Approach to Justice” (2012) 3(1)(4) IIPJ.

VI Parliamentary and Government Materials

A Deeds of Settlements

Office of Treaty Settlements (4 June 2013) “Ngāi Tūhoe Deed of Settlement”.

Office of Treaty Settlements (27 March 2003) “Ngāti Awa Deed of Settlement”.

Office of Treaty Settlements (20 December 2001) “Ngati Tama Deed of Settlement”.

Office of Treaty Settlements (7 December 2012) “Ngāti Toa Deed of Settlement”.

Office of Treaty Settlements (8 July 2017) “Ngāti Tūwharetoa Deed of Settlement”.

B *Hansard*

(23 July 2014) 700 NZPD 19463.

(23 July 2014) 700 NZPD 19477.

(23 July 2014) 700 NZPD 19481.

C *Other*

New Zealand Parliament “Overview of Customary Title” <www.parliament.nz>.

VII **Law Commission Reports**

Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP 9, 2001).

VIII **Waitangi Tribunal Reports**

Waitangi Tribunal *Ahu Moana: The Aquaculture and Marine Farming Report* (Wai 95, 2002).

Waitangi Tribunal *Ko Aotearoa Tēnei* (Wai 262, 2011)

Waitangi Tribunal *Te Urewera: Pre-publication, Part 1* (Wai 894, 2009).

Waitangi Tribunal *Te Whanganui a Tara me ona Takiwa: Report on the Wellington District* (Wai 145, 2003).

IV Unpublished Papers

A Dissertations

James Morris “Affording New Zealand rivers legal personality: a new vehicle for achieving Māori aspirations in co-management?” (LLM Dissertation, University of Otago, 2009).

Jacinta Ruru “Settling Indigenous Place: Reconciling Legal Fictions in Governing Canada and Aotearoa New Zealand’s National Parks” (PHD Dissertation, University of Victoria, 2012).

Kristen Wong “Breaking the Cycle: the Development of Corporate Criminal Law” (LLB(Hons) Dissertation, University of Otago, 2012).

B Other Papers

Ngahuia Te Awekotuku and Linda Nikora “Nga Taonga o Te Urewera” (report prepared for the Waitangi Tribunal's Urewera District Inquiry, August 2003) (accessed at www.ngaiTuhoe.com)

Joe Williams “The Māori Land Court - A Separate Legal System?” (occasional paper published by the New Zealand Centre for Public Law, Victoria University of Wellington, July 2001).

X Commentary

Company Law (online looseleaf ed, Thomson Reuters NZ).

Human Rights Law (online looseleaf ed, Thomson Reuters NZ).

XI Internet Materials

Department of Conservation “Te Urewera: Nature and Conservation”

<<http://www.doc.govt.nz>>.

Catherine Iorns “A world where the rivers are people too” (22 June 2017) Elgar Blog

<<https://elgar.blog>>.

Companies Office “Register statistics” (16 August 2017)

<www.companiesoffice.govt.nz>.

Ngai Tūhoe “Map of Te Urewera” <www.ngaituhoe.iwi.nz>.

Ngati Porou “Kaitiakitanga | Environment” Te Runanganui o Ngati Porou

<www.ngatiporou.com>.

Te Ahukaramū Charles Royal “Papatūānuku – the land” (24 September 2007) Te Ara -

the Encyclopedia of New Zealand <www.teara.govt.nz>

Rāwiri Taonui “Te ture – Māori and legislation” (20 June 2012) Te Ara - the Encyclopedia

of New Zealand <www.teara.govt.nz>.

Tourism New Zealand “Te Urewera” 100% Pure New Zealand <www.newzealand.com>.

John Wilson “History” (8 Feb 2005) Te Ara – the Encyclopaedia of New Zealand

<<https://teara.govt.nz>>.

XII News Articles

John Sargeant “People now slip behind rivers in order of importance” *Stuff* (online ed, Wellington, March 20 2017).

Tariana Turia “Tariana Turia: Te Urewera and Tūhoe are inseparable” *The New Zealand Herald* (online ed, Auckland, 14 May 2010).

XIII Other Resources

Commerce Commission New Zealand *Criminal Prosecution Guidelines* (October 2013).

Land Information New Zealand *Prosecution Policy* (August 2017).

Office of Treaty Settlements *Healing the past, building a future* (Ministry of Justice, March 2015).

Te Kawa o Te Urewera (The Te Urewera Management plan) 2017 (accessed at www.ngaituhoe.iwi.nz).