

Introduction to the New Zealand Legal System

R D Mulholland

Fourth Edition

Butterworths

INTRODUCTION
TO THE
NEW ZEALAND
LEGAL SYSTEM

by

R D MULHOLLAND

MA, MCA, LLB

Senior Lecturer in Business Law, Massey University

WELLINGTON
BUTTERWORTHS

1980

BUTTERWORTHS OF NEW ZEALAND LTD

31-35 Cumberland Place, Wellington

A Member of the Butterworth Group

London Boston Durban Sydney Toronto Wellington

ISBN 0-409-60080-5

©

Butterworths of New Zealand Ltd

1980

Typeset by Butterworths
Printed in Australia by Hedges & Bell Pty Ltd, Victoria

PREFACE TO THE FOURTH EDITION

In bringing out the fourth edition of this work the opportunity has been taken to bring the law up to date. However this has presented some difficulty with the current state of the law especially in the field of Family Law where, at the time of writing, the Family Proceedings Bill (No 2) had not been passed but referred back to a Parliamentary Select Committee for further consideration. Also the Family Courts Bill which has been referred to in the text of this work, was still not law at the time of going to print.

Mention should also be made of the proposed Credit Contracts Bill which was announced in mid August and was not available at the time of this writing. That Bill subsumed a private member's bill but its exact scope is not available although it appears to be aimed principally at making disclosure of the full cost of credit, including the true rate of interest in hire purchase transactions, mandatory by the lender.

It is hoped that the work will continue to be found useful by students and general readers desiring an introductory text in the general law of New Zealand.

R D Mulholland.

Palmerston North

August 1980

TABLE OF CASES

<i>Para</i>	<i>Para</i>
Ajayi v R T Briscoe (Nigeria) Ltd (1964)	56
Awaroa Holdings Ltd v Commercial Securities and Finance Ltd (1976)	74
Baird v Williamson (1863)	55
Bell v Lever Bros Ltd (1931)	73
Bognuda v Upton and Shearer Ltd (1972)	53
Bolton v Stone (1951)	55
Boutique Balmoral Ltd v Retail Holdings Ltd (1976)	80
Boyd v Mayor, etc, of Wellington (1924)	113 App 2
Broome v Cassell & Co (1971)	54, 125
Carlill v Carbolie Smoke Ball Company (1892)	70
Camkin v Bishop (1941)	123
Carey v Hastie (1968)	77
Central London Property Trust Ltd v High Trees House Ltd (1947)	56
Combe v Combe (1951)	56
Conway v Rimmer (1968)	54
Corbett v Social Security Commission (1962)	54
Couturier v Hastie (1856)	73, 80
D & C Builders v Rees (1966)	56
Derry v Peek (1886-90)	74
Donoghue v Stevenson (1932)	123, 138
Duncan v Cammel Laird (1947)	54
Durrell v Evans (1862)	80
Feast Contractors Ltd v Ray Vincent Ltd (1974)	90
Foakes v Beer (1184)	56
Frazer v Walker (1967)	113, App 2
Gibbs v Messer (1891)	113
Godley v Perry (1960)	90
Hanna v Auckland City Corporation (1945)	38
Harding v Coburn (1976)	77
Heydon's Case (1584)	34
Hughes v Metropolitan Railway Co (1877)	56
Henningsen v Bloomfield Motors (1960)	138
Hollywood Silver Fox Farm Ltd v Emmett (1936)	122
Ingram v Little (1960)	73
Jackson v Townsend (1913)	90
Kerridge v Girling-Butcher (1933)	38
Khyatt v Morgan (1961)	122
Leaf v International Galleries (1950)	73
Lee v Lee's Air Farming Ltd (1961)	23, App 2, 56, 59, 60, 66
Lewis v Averay (1971)	73
Littlewood's Mail Order Stores v Inland Revenue Commissioners (1969)	66
Lumley v Wagner (1852)	75
McCabe v Russell and Others (1961)	123
McRae v Commonwealth Disposals Commission (1951)	73
Maddison v Alderson (1883)	80
Mardon v Holloway (1967)	113
Matheson and Another v Northcote College Board of Governors (1975)	55
Maurangi v High Commissioner of the Cook Islands (1975)	9
Montgomery and Rennie v Continental Bags (NZ) Ltd (1972)	73
Morgan v Khyatt (1962)	23, 45, App 2
National Coal Board v J E Evans Ltd (1951)	121
Parsons v Burk (1971)	50
People v Rochester Railway and Light Company (1909)	53
Pharmaceutical Society of Great Britain v Boots Cash Chemist (Southern) Ltd (1952)	70
Practice Statement (1966)	54
Rayner, In re, Daniell v Rayner (1948)	53
Jon Beauforte (London) Ltd, Re (1953)	67

Table of Cases

Robinson v State of South Australia (No 2) (1931).....	54	Smith v Kendrick (1843)	55
Rookes v Barnard (1964)	54	— v Wellington Woollen Manufac- turing Co Ltd (1956)	53
Russell v McCabe	55	Spiro v Linteen (1973)	83
R v Douglas (1966)	35	Steadman v Steadman (1976)	80
— v Electricity Commissioners (1924)	26	Sutton v O'Kane (1973)	113
— v Fineberg (1968).....	13, 29	Taylor v Combined Buyers (1924)	90
— v Kysant (1932)	74	Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd (1955)	
— v Murray Wright Ltd (1970).....	53, 66		56
R v Viro (1978)	23	Wainwright and Butler v Police (1968)	33
Rylands v Fletcher (1868).....	52, 55, App 2	Walton v Holland (1963)	26
Salomon v Salomon and Co (1897).....	60, 66	Watchtower Bible & Tract Society v Mt Roskill Borough Council (1959)	26
Scales v Pickering (1828)	35	Webster v Cecil (1861)	73
Sealeigh-Denfield v O'Callaghan (1940)	122	Whitaker v Carruthers (1975)	80
Simpson v A-G (1955)	29	With v O'Flanagan (1936)	74

TABLE OF STATUTES

	<i>Para</i>		<i>Para</i>
Accident Compensation Act		Contraception, Sterilisation and Abortion	
1972.....	21, 40, 128	Act 1977.....	3, 150
Acts Interpretation Act 1926.....	34	Contracts Enforcement Act	
s 5(j).....	34	1957.....	32, 80, 82, 111
Adoption Act 1955.....	19, 159	s 2.....	80
Age of Majority Act 1970.....	72	Contractual Mistakes Act	
s 4.....	72	1977.....	6, 19, 73
Air Services Licensing Act		s 4.....	73
1951.....	25, 38	s 5.....	73
s 52.....	38	s 6.....	73
Anchors and Chain Cables Act	1899	s 7.....	73
(UK).....	30	s 8.....	73
Annual Holidays Act 1944.....	40	Contractual Remedies Act	
Apprentices Act 1948.....	38	1979.....	19, 75
s 44.....	38	Contributory Negligence Act	
Bankruptcy Act 1908 (repealed)....	100	1947.....	132
Bills of Exchange Act 1908.....	50	Counties Act 1956.....	18
Board of Trade Act 1950		Crimes Act 1908 (repealed).....	2
(repealed).....	5	Crimes Act 1961.....	2, 41
Building Performance Guarantee		Criminal Justice Act 1954.....	42
Corporation Act 1977.....	143	Declaratory Judgments Act	
Bylaws Act 1910.....	38	1908.....	26
s 8(2).....	38	Defamation Act 1954.....	125
Charitable Trusts Act 1957.....	132	s 4.....	125
s 7.....	132	s 6.....	125
s 34.....	132	s 12.....	125
s 61(A).....	132	District Courts Act	
Chattels Transfer Act 1924.....	95-101	1947.....	19
s 2.....	96	Domestic Actions Act	
s 18.....	99	1975.....	19, 152
s 57.....	96, 101, 104	Domestic Proceedings Act	
Citizenship Act 1977.....	40	1968.....	40, 151
Civil List Act 1950.....	15	Door to Door Sales Act	
Civil List Act 1979.....	13	1961.....	3, 140
Clean Air Act 1972.....	115	Economic Stabilisation Act	
Commerce Act		1948.....	5, 105
1975.....	3, 5, 26, 144	Electoral Act 1927	
Commercial Trusts Act 1910.....	150	(repealed).....	29
Companies Act		Electoral Act 1956.....	13, 21
1955.....	45, 64, 66, 68, 148, 150	s 161.....	21
s 14.....	65	Emergency Regulations Act	
s 26.....	65	1939.....	7
s 27.....	65	English Acts Act 1851.....	30
s 31.....	65	English Laws Act 1858.....	30
Consumer Information Act		s 1.....	30
1969.....	3, 142	English Laws Act 1908.....	30

Table of Statutes

	Para		Para
s 2.....	30	Judicature Act 1872-75	
Factories Act 1946.....	40	(UK).....	51
Family Protection Act		Justices of the Peace Act	
1955.....	5, 115, 134, 162	1957.....	27
Frustrated Contracts Act		Land Settlement Promotion	
1944.....	6, 148	Aggregation	
Gaming Act 1908.....	78	Act 1956.....	115
Guardianship Act 1968.....	19, 158	Land Transfer Act 1952.....	6, 112
Hire Purchase Act		s 62.....	114
1971.....	3, 19, 90, 102-106	Law Reform (Testamentary	
ss 4-10.....	106	Promises) Act	
s 5.....	106	1949.....	134
ss 11-17.....	106	Layby Sales Act 1971.....	141
s 12.....	90, 106	Limitation Act 1950.....	79
ss 20-21.....	106	Litter Act 1968.....	41
s 37.....	106	Local Authorities (Petroleum	
s 51.....	106	Tax Act) 1970.....	38
Hire Purchase and Credit Sales		s 34.....	38
Stabilisation Regulations		Maori Affairs Act 1953.....	24
1957.....	5, 105	Magna Charta 1225.....	30
Hire Purchase Agreements Act		Marine Pollution Act 1972.....	115
1939 (repealed).....	106	Marriage Act 1955.....	19, 40, 152
Human Rights Commission Act		Matrimonial Proceedings Act	
1977.....	26A	1963.....	40, 150
Illegal Contracts Act 1970		Matrimonial Property Act 1970	
6, 19, 77.....	s 777	(UK).....	83
s 8.....	78	Matrimonial Property Act	
Income Tax Act 1976.....	40	1976... 19, 40, 115, 150, 151, 155, 156	
Industrial Relations Act		Minors' Contracts Act	
1973.....	24, 40, 51A, 63, 144	1969.....	19, 72, 81
Industrial Relations Amendment		s 2.....	35
Act 1977.....	24	s 4.....	72
s 48.....	24	s 5.....	72
Infants Act 1908 (repealed).....	72	s 6.....	72
s 12(a).....	72	Monopoly Prevention Act 1908	
Inland Revenue Department Act		(repealed).....	150
1974.....	26	Motor Vehicle Dealers Act	
Insolvency Act 1967.....	19, 49, 100	1975.....	145
Insurance Law Reform Act		Municipal Corporations Act	
1977.....	146	1954.....	18, 40
Joint Family Homes Act 1964.....	161	s 386.....	38
Judicature Act 1908.....	21	Narcotics Act 1965.....	41
s 16.....	21	New Zealand Constitution Act	
s 19(A).....	21	1852 (UK).....	13
s 92.....	56	New Zealand Constitution	
Judicature Amendment Act		Amendment Act	
1957.....	22	1947 (UK).....	13
Judicature Amendment Act		New Zealand Council of Law	
1972.....	26	Reporting Act	

Table of Statutes

	Para		Para
1938 (UK)	58	s 50	94
New Zealand National Airways Corporation Act 1945		s 52	94
s 33	38	s 56	90, 150
Occupiers' Liability Act		s 59	82
1963	6, 40, 126	Secret Commissions Act	
Order in Council 1910	23	1910	78, 84
Parliamentary Commissioner (Ombudsman)		Shipping and Seamen Amendment Act	30
Act 1962	25	Shops and Offices Act 1955	40
Partnership Act 1908	120, 150	Small Claims Tribunals Act	
s 13	120	1976	20, 139
Police Offences Act		s 4	20
1927	7, 19, 40, 41	s 5	20
s 3D	33, 41	s 7	20
Police Offences Amendment Act		s 9	20
1951	7	s 11	20
Privy Council (Judicial Review) Rules Notice 1973		s 13	20
(SR 1973/181)	24	s 15	20
Public Safety Conservation Act		s 16	20
1936	7	s 21	20
Public Works Act		s 24	20
1928	101, 116	s 29	20
Rating Act 1967	40	s 34	20
Real Estate Agents Act 1976	146	Social Security Act 1964	5, 155
Regulations Act 1936	38	State Services Act 1962	17
s 8	38	Status of Children Act 1969	160
Safety of Children's Night Clothes Act 1977	146	Statute of Westminster 1931 (UK)	13
Sale of Goods Act		Statute of Frauds 1688	80
1908	40, 50, 82, 137, 147, 150	Summary Proceedings Act	
s 2	86	1957	19, 27, 43
s 4	72	s 66	43
s 13(2)	89, 92	Syndicates Act 1973	150
s 14	90	Town and Country Planning Act	
s 15	89	1977	21, 26, 115
s 16	89, 90	Trade Practices Act 1958	
s 17	90	(repealed)	3, 78
s 18	91	Transport Act 1962	40, 41
s 21	91	Trustee Act 1956	
s 23	92	s 4	131
s 26	92	s 38	131
s 31	93	s 64	131
s 32	93	s 66	131
s 33	93	Wages Protection Act 1964	40
s 37	93	Wages Protection and Contractors' Liens Act 1939	118
s 42	94	Wills Act 1837(UK)	135
s 45	94	s 9	135
s 49	94	Workers' Compensation Act 1922 (repealed)	60

TABLE OF CONTENTS

	<i>Page</i>
Preface to Fourth Edition.....	v
Table of Cases.....	xiii
Table of Statutes.....	xv
 Chapter 1—THE LAW IN NEW ZEALAND SOCIETY	
1 Introduction.....	1
2 The Law and the Value System of Society.....	1
3 Politics and the Law — Pressure Groups.....	4
4 The Margin of the Law.....	7
5 Economic Control.....	8
6 The Rationalisation of Society.....	9
7 The Law and Social Order.....	10
8 The Law and Institutionalised Power.....	11
9 The Legal System as a Residual of Society.....	12
10 What is Law.....	13
11 The Rule of Law.....	15
 Chapter 2—INSTITUTIONS	
12 Introduction—An Overview of Institutions.....	19
12A The Constitution of New Zealand.....	20
12B The Governor-General.....	20
13 Parliament.....	22
14 Committees of Parliament.....	26
15 The Executive.....	27
15A The Parliamentary Opposition.....	30
16 The Party Caucus.....	32
17 Government Departments.....	32
18 Local Authorities.....	34
19 The Courts—District Courts.....	34
20 Small Claims Tribunals.....	38
21 The High Court.....	39
21A The Jury System.....	41
22 The Court of Appeal.....	44
23 Privy Council.....	44
24 Courts of Special Jurisdiction.....	46
24A Reform of the Courts.....	47
25 The Ombudsman.....	47
26 Administrative Tribunals.....	48
26A The Human Rights Commission.....	52
27 Justices of the Peace.....	53
28 The Separation of Powers.....	55
 Chapter 3—LEGISLATION	
29 Introduction—An Overview of Legislation.....	59
30 English Statutes in Force in New Zealand.....	61
31 The Birth of Legislation.....	63

Table of Contents

	<i>Page</i>
32 The Form of Legislation	65
33 Interpreting Statutes	67
34 The Approach of the Court to the Statute	69
35 The Meaning of Words and Phrases	70
36 The Presumptions	72
37 Intrinsic Aids in Interpretation	72
38 Delegated Legislation	73
Chapter 4—THE LAW IN EVERYDAY LIFE	
39 Introduction	77
40 Fred and the Law	77
41 Criminal Proceedings	79
42 Criminal Punishments	80
43 The Course of a Criminal Action	81
44 Civil Actions	83
45 The Purpose of Civil Actions	84
46 The Course of a Civil Action	86
47 The Hearing	88
48 Costs	89
49 The Enforcement of Judgments	89
Chapter 5—THE LEGAL PROCESS	
50 The Common Law	91
51 Equity and the Court of Chancery	92
51A The Adversary System	93
52 Precedent	94
53 Precedent and the Hierarchy of Courts	97
54 The Future of the Doctrine of Precedent	99
55 The Nature of Judge-Made Law	100
56 Equitable Estoppel as Demonstrating the Judicial Technique	102
57 Case Citation	105
58 Law Reporting	107
59 Reading the Case	110
60 Case Brief	112
Chapter 6—LEGAL PERSONALITY	
61 The Nature of Legal Personality	115
62 The Legal Results of Incorporation	115
63 Kinds of Corporation	116
64 Companies and the Companies Act 1955	118
65 The Formation of a Company	118
66 Separate Corporate Identity	119
67 Ultra Vires	121
68 The Life of a Company	122
Chapter 7—THE LAW OF CONTRACT	
69 Introduction	125
70 Offer and Acceptance	127
71 Consideration	132

Table of Contents

	<i>Page</i>
72 Capacity to contract	133
73 Mistake	135
74 Misrepresentation	139
75 Contractual Remedies	141
76 Duress and Undue Influence	144
77 Void and Illegal Contracts	145
78 Contracts in Restraint of Trade	146
79 Discharge of Contract	146
80 Contracts Enforcement Act	148
Chapter 8—LAW OF AGENCY	
81 Introduction	153
82 Agents in New Zealand	153
83 The Creation of an Agent-Principal Relationship	154
84 Relationship Between Principal and Agent	156
85 Who May Sue?	157
86 Termination of Agency	158
Chapter 9—SALE OF GOODS	
87 Introduction	159
88 Scope of the Act	160
89 Conditions and Warranties	160
90 Implied Conditions and Warranties	161
91 The Passing of Property	164
92 Title to Goods	164
93 Performance of the Contract	165
94 Rights of the Parties	165
Chapter 10—LAW OF CHATTELS TRANSFER	
95 The Chattels Transfer Act 1924	167
96 Instruments	167
97 Chattels	168
98 Mode of Registration	168
99 Effect of Non-Registration	169
100 The Reduced Importance of the Chattels Transfer Act	169
101 Customary Hire Purchase Agreements	169
Chapter 11—THE LAW OF HIRE PURCHASE	
102 Introduction	171
103 Financing Hire Purchase Transactions	171
104 Customary Hire Purchase Agreements	172
105 The Hire Purchase and Credit Sales Stabilisation Regulations	172
106 Hire Purchase Act 1971	173
Chapter 12—THE LAW OF PROPERTY	
107 Property	177
108 Ownership	177
109 Rights in Property Apart From Ownership	179
110 Real Property: The Estate in Land	180

Table of Contents

	<i>Page</i>
111 The Transfer of Land	181
112 The Torrens System of Land Registration	182
113 Indefeasibility of Title	183
114 The Certificate of Title	186
115 Controls Over the Ownership and Use of Property	186
116 Personal Property	187
117 Gifts of Chattels	188
118 Security Over Chattels	188
Chapter 13—THE LAW OF TORTS	
119 The Nature of a Tort	191
120 Vicarious Liability	192
121 General Defences to Actions in Tort	193
122 Nuisance	193
123 Negligence	195
124 Trespass	196
125 Defamation	196
126 Occupiers' Liability	197
127 Other Torts	198
128 Accident Compensation	199
Chapter 14—THE LAW OF TRUSTS AND WILLS	
129 The Nature of a Trust	201
130 Forms of Trusts	202
131 Trustees	203
132 Charitable Trusts	204
133 Fiduciary Relationships	205
134 The Nature of a Will	206
135 The Form of a Will	206
136 Executors and Administrators	206
Chapter 15—CONSUMER LAW	
137 Introduction	209
138 Consumer Protection at Common Law	209
139 Small Claims	210
140 The Door to Door Sales Act 1967	210
141 The Layby Sales Act 1971	211
142 The Consumer Information Act 1969	211
143 The Building Performance Guarantee Corporation Act 1977	211
144 The Commerce Act 1975	211
145 The Motor Vehicle Dealers Act 1975	212
146 Other Legislation	212
147 Proposed Amendments to the Law	213
Chapter 16—LAW REFORM	
148 Introduction	215
149 The Machinery of Law Reform	216
150 The Ethos and Complexity of Law Reform	217

Table of Contents

	<i>Page</i>
Chapter 17—FAMILY LAW	
151 Introduction	223
152 Marriage	223
153 The Dissolution of Marriage	225
154 Separation Orders	225
155 Maintenance.....	226
156 Non-molestation Orders.....	227
157 Matrimonial Property.....	227
158 Guardianship and Custody	228
159 Adoption.....	229
160 Paternity Orders	229
161 Joint Family Homes	229
162 Family Protection	230
Appendix 1 — CONTRACTS ENFORCEMENT ACT 1956.....	231
Appendix 2 — CASES FOR DETAILED CLASS STUDY.....	233
Index	345

CHAPTER I

THE LAW IN NEW ZEALAND SOCIETY

[1] Introduction

The law in New Zealand derives broadly from two sources. Firstly, we have the "common law", that is the body of law which has been built up by the decisions of the Courts stretching back over many years. A system of judicial precedent has evolved in the legal systems of many English-speaking nations, including New Zealand, whereby lower Courts are bound to follow the decisions of those Courts above them in the hierarchy of Courts. This will be accorded more attention in Chapter 4.

Historically this "Judge-made" law has constituted the major source of our law and several important branches of law, for example Contract and Torts, still rely predominantly upon principles evolved by the Courts.

Secondly, we have statute law, that is the law which Parliament makes in the form of statutes. This is rapidly assuming a dominant role in New Zealand as a source of law, as most of the social and economic changes which reflect into our legal system come by way of new legislation or changes in existing legislation. Government policy will usually be implemented by means of legislation.

We shall now examine in summary form some of the major forces which activate and affect the general direction of the law and the passing of legislation in New Zealand. It should be pointed out that these do not follow any consistent pattern and it cannot be said that any one force occupies a generally dominant position. In one particular case one force may be to the fore while in the next case we find a different force playing a dominant role. There is thus a very substantive element of randomness in the interaction of social forces with the law. This makes it very difficult to lay down general principles which can be broadly applied to many different situations.

[2] The law and the value system of society

As a society evolves and develops it will formulate a set of beliefs and ideas as to what amounts to acceptable conduct and what amounts to culpable conduct. These beliefs and ideas constitute the "value

system" of a society. By a process of "socialisation" operating predominantly through the education system and the home environment of children these beliefs are "internalised" and perpetuated.

The values current in a particular society will inevitably reflect into the law as a whole but can be very readily discerned in the criminal law. It should be pointed out that it is very difficult to differentiate what might be termed limited from broad aspects of individual values which can merge with a person's individual interests. Thus, for example, somebody with large holdings of land will generally regard the attribute of the private ownership of land as desirable and will not want to see the law placing restrictions upon the accumulating or use of private property. A person with the potential to work and make money will generally exhibit as a norm that hard work and thrift are desirable and that the law ought not to interfere with his pursuance of such ends. Indeed at times in the past broad economic policies have obtained currency and have succeeded in weighting themselves into the law. Until the early years of this century the legal system assumed the general policy that businessmen should be left alone to work out their own deals without interference from the Government. The general principles of our present law of contract were built up in such an atmosphere and clearly reflected the harsh results which flowed from such a policy.

What may be termed "value trends" appear from time to time and these could well make themselves felt in the law. Thus the 1960s was the civil rights era and this was followed by a movement emphasizing racial harmony and the rights of coloured persons. Because of its obvious use as a political weapon the norm of "consumer protection" has persisted possibly longer than most other value trends and since early in the 1960s a substantial volume of legislation has been passed in New Zealand for the purpose of protecting the consuming public (refer to Chapter 15).

Not all values exhibited in a particular society will reflect into the legal system. This becomes evident when the question of moral values are considered that is those aspects of the value system which are concerned with the more intimate personal, including sexual, relationships. For example in New Zealand few people would challenge the view that murder, robbery, or assault were immoral and indeed such acts are prohibited by our criminal law. On the other hand, most would agree that adultery was immoral and yet such an act does not amount to a criminal offence, although it can have other legal consequences in the matrimonial field. Lying is not a criminal offence unless such occurs while a person is upon oath or is made to the police and yet the propensity to lie is generally regarded as an undesirable personal attribute. Many

factors can operate to determine whether or not an act generally regarded as immoral will find a place as a crime in our law. These can include difficulties in defining such acts, the obvious problem of the prevalence of such acts and difficulties in respect to obtaining evidence.

In New Zealand the value system tends these days to be diffused and there are many differing opinions as to what acts should amount to an offence. This state of affairs can pose problems for the law because if a strongly vocal group campaigns against a particular law, then this will tend to taint the legal system (or at least a part of it) with illegitimacy; its basic correctness may be called into question. Thus in recent years in New Zealand public debate has raged over such aspects of our criminal law as: what language should the law regard as obscene; what should amount to offensive or disorderly behaviour in a public place (which has been brought into prominence by the number of demonstrations which have taken place in recent times) the circumstances in which the law should allow the termination of the life of an unborn child and whether certain homosexual acts should be criminal. It should be pointed out that many of our statutory provisions relating to indecent and obscene language and disorderly behaviour frequently leave a substantial degree of latitude to the Judge, who may take into account what he believes to be the public attitude when deciding whether or not an offence has been committed (that is, for example, whether a particular word is obscene) and if there is public controversy over the matter before the Court the Judges task tends to be made that much more difficult. It is clear that it is going to become increasingly difficult to find a uniformly acceptable standard of values to base our criminal law upon.

A further problem arises, in that views will tend to alter over a period of time. What is acceptable in one age may not be acceptable in the next and vice versa. This could pose a problem for the Courts in regard to the use of past cases as precedents. If a Court gives a decision based upon precedents which are some years old the outcome could well be a decision which is unacceptable to the generation which has to live with the decision.

The observation is frequently made these days that there is a tendency for Judges to be drawn from the middle and upper classes of society and there will be an unconscious but perhaps inevitable tendency for Court decisions to reflect the mores of the middle and upper classes. No matter how impartial a Judge may try to be, his decision must be set within the boundaries of his own mentality, which will be fashioned by his upbringing and training. It is contended that it is not easy for poorer groups in society to weight their demands into the legal