

### *Unlawful interference with another's business*

The principle enunciated in *Emms v. Brad Lovett Ltd.* [1973] 1 N.Z.L.R. 282 was that a breach of a condition of a licence could constitute an unlawful interference with another's business. Both the plaintiff and the respondent held licences to operate mobile shops. The plaintiff alleged that the first respondent was continually stopping his van close to the plaintiff's mobile shop in breach of a local bylaw which provided that no travelling mobile shop should be stopped for the purpose of trading within 300 yards of any shop including a mobile shop. Perry J. held that the breach of this condition constituted an unlawful interference with the plaintiff's business.

### *Legislation*

One of the consequences of the recent amendment to the Accident Compensation Act 1972 (Accident Compensation Amendment Act (No. 2) 1973) is the creation under s. 102 (b) of a supplementary scheme incorporating non-earners and persons not covered under any other scheme. This section extends cover to such persons subject however to certain limitations, such as that they are not entitled to periodic payments under the Act.

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## TRUSTS AND EQUITY

### *Charitable Trusts*

In *In re Watson* [1973] 1 W.L.R. 1472 the question was whether or not a trust for the provision of money to aid the efforts of an eccentric religious writer was a charitable trust. The writings presented eccentric views many of which were old and discredited and the writings as a whole, which had no intrinsic value, served little purpose in extending knowledge of the Christian religion. The court however accepted that there was a religious tendency in the writings and as they were not subversive of all morality or religion this was sufficient to uphold the trusts as charitable.

The testatrix in *In re Cohen* [1973] 1 All E.R. 889 made provision in her will for the application of part of her residuary estate towards the benefit and maintenance of "any relative of mine whom my trustees shall consider to be in special need". Following the House of Lords decision in *Dingle v. Turner* [1972] A.C. 601, where it was confirmed that a trust for the relief of poverty creates an exception to the general requirement that a charitable trust must confer a public benefit, the trust in *Cohen's* case was held to be charitable even though the class to benefit was essentially private. Templeton J. considered that the object of this trust was to relieve poverty amongst a class and refused to accept the proposition that a relative "in special need" was not necessarily poor.

### *Constructive Trusts*

In *New Zealand Netherlands Society "Orange" Inc. v. Kuys* [1973] 2 N.Z.L.R. 163 the Privy Council held that a man when acting as secretary to a society and editor of its newsletter was in a fiduciary position and could not normally obtain profit from it. However in that case the secretary in establishing another newsletter had acted with the consent of the society after full disclosure of material facts to it, and accordingly the Board held that there had been no breach of the fiduciary relationship by the secretary and he was entitled to an injunction prohibiting the society from publishing a newsletter of a similar kind.

Another New Zealand case in which a constructive trust was held to exist was *Westminster Chemical N.Z. Ltd. v. McKinley* [1973] 1 N.Z.L.R. 659 but this case involved a company director and has already been noted in the section on Company Law.

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## WILLS AND ADMINISTRATION

### *Wills expressed to be in contemplation of marriage*

In the case of *Public Trustee v. Crawley* [1973] 1 N.Z.L.R. 695, the question arose as to whether or not the use of the words "my fiancée" was sufficient to bring a will within the ambit of s. 13 (1) Wills Amendment Act 1955 as being a will expressed to be in contemplation of marriage, or whether the use of such a phrase would not have the pre-nuptial will from revocation under s. 18 Wills Act 1837 (U.K.). In *Burton v. McGregor* [1953] N.Z.L.R. 487 F. B. Adams J. had held that a provision for a fiancée was not sufficient to save the will from revocation but in the same year in *In re Langston* [1953] 1 All E.R. 928 Davies J. took the opposite view. The Supreme Court in *Crawley's* case chose to follow *Burton v. McGregor* and decided that the mere fact that provision is made for a fiancée in a will is insufficient to show that the will was made expressly in contemplation of, and therefore not to be revoked by, the subsequent marriage.

### *Revocation and republication of wills*

*Guardian Trust Co. Ltd. v. Darroch* [1973] 2 N.Z.L.R. 143 represents a considerable inroad into the established rule of construction of wills, that when a person with capacity executes a will and has it read through to him he adopts the words in that will, and the ordinary meaning of those words, even where the will was not home-made but prepared by a solicitor and the words concerned had a special legal meaning. In 1963 there had been a will made by the testatrix while in New Zealand, which disposed of all her property. In 1970 she executed