

NZULR ABSTRACTS
Vol 22, No 1 June 2006

THE WORLD COMMUNITY AND ITS LAWS

K J KEITH

This celebration of the work of Colin Aikman considers the relationship between national interest and international law in the light of the great changes in the world community over the past half-century. It describes the emergence of the rule of law as an important concept in the international sphere and discusses specific steps towards its development. The role of national as well as international institutions is emphasised, as is that of the individual lawyer.

**LEGISLATION WITH RETROSPECTIVE EFFECT, WITH PARTICULAR REFERENCE
TO TAX LOOPHOLES AND AVOIDANCE**

JOHN PREBBLE, REBECCA PREBBLE AND CATHERINE VIDLER SMITH

From time to time, retrospective legislation enters the statute book, despite being denounced as illegal, unconstitutional, undemocratic, and contrary to natural justice and to the rule of law. These denunciations are particularly vehement when the legislation in question imposes tax. This article considers the criticisms of retrospective legislation, particularly in the light of legislation designed to frustrate tax avoidance. A sequel, "Retrospective Legislation: Reliance, the Public Interest, Principles of Interpretation and the Special Case of Anti-Avoidance Legislation", will be published in the next issue of this Review. It will further develop the themes of this article and will consider whether retrospective legislation can be justified.

**RESOLVING CASES OF CONFLICTING RIGHTS UNDER THE
NEW ZEALAND BILL OF RIGHTS ACT**

SELENE MIZE

Rights occasionally conflict. For example, absolute freedom of the press for trial publicity may conflict with a defendant's right to a fair trial. This article takes a critical look at the way the courts have been resolving these conflicts under the New Zealand Bill of Rights Act 1990. It concludes that there should be a more uniform approach to resolving cases of competing rights; that the main balancing exercise should be conducted under the rubric of section 5 of the Act; and that there should be formal recognition of the special status of rights.

**THE EXPECTED IMPACT OF THE SUPREME COURT OF
NEW ZEALAND ON TAX CASES**

GEOFFREY J HARLEY

The creation of a new Court of final appeal for New Zealand by the Supreme Court Act 2003 raises many questions as to the future course and development of our law. Three such questions will be canvassed in the article to follow: First, what approach is the Court likely to take to the doctrine of precedent? Secondly, how might the requirement and grounds for leave to appeal apply in practice? Thirdly, what approach might be taken by the Court, with particular regard to tax cases? The author is critical of the inconsistent and general approach taken over the past thirty years by the Privy Council to New Zealand tax cases, particularly those concerned with avoidance, and explains why better can be expected of the Supreme Court.

PĀKEHĀ BY LAW: THE EUROPEANISATION OF MĀORI 1912-1931

PAUL MEREDITH

Section 17 of the Native Land Amendment Act 1912 allowed the Governor-General, on the recommendation of the Native Land Court, to declare a Native to be a European in law. This study records and analyses the origins of the legislative provision, the motives of its sponsors, the response by Maori, and its functioning between 1912 and 1931, with a view to understanding the reasons and circumstances which prompted applications and saw seventy seven Maori Europeanised.

HOANI TE HEUHEU'S CASE IN LONDON 1940-1941: AN EXPLOSIVE STORY

ALEX FRAME

This article traces the history of Hoani Te Heuheu's 1940 appeal to the Privy Council in London, resulting in the tenacious doctrine that the Treaty of Waitangi is only justiciable where Parliament has so enacted. The personal papers of counsel in the appeal are used to reveal the wartime difficulties. The article critically examines the doctrine and proposes a re-evaluation and reformulation of it.