

NZULR ABSTRACTS
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**YOU DON'T ALWAYS GET WHAT YOU PAY FOR:
NO BILL OF RIGHTS FOR AUSTRALIA**

JAMES ALLAN

The author, a bill of rights sceptic, begins by outlining the recent attempt in Australia to garner support for, and then to enact, a statutory bill of rights by means of a national consultation committee. He then explains why that attempt failed. He also discusses two influential cases from the State of Victoria, the only Australian State that has a statutory (or any sort of) bill of rights. And he concludes by relating this failed attempt to bring in a statutory bill of rights to New Zealand and the New Zealand experience.

THE FUTURE OF EXEMPLARY DAMAGES IN NEW ZEALAND

ALLAN BEEVER

This article examines the recent decision of the Supreme Court in Couch v Attorney-General and the surrounding case law with respect to the award of exemplary damages. It discusses the two approaches advanced in Couch v Attorney-General: the majority's and the one propounded by Elias CJ. It argues that the former is clearly preferable to the latter. However, it also maintains that the first approach is highly problematic and that, in fact, it can be used to uncover the fundamental problems with the award of exemplary damages in general. The article argues that this award ought to be abolished and that the position of the majority is, on reflection, committed to this view.

**CROSS-BORDER AND EXTRATERRITORIAL APPLICATION OF
NEW ZEALAND DATA PROTECTION LAWS TO ONLINE ACTIVITY**

ALAN TOY

Online, personal information often moves across territorial boundaries. To what extent do national data protection laws apply in this context? Information may be entered and stored on offshore servers connected to the keyboard where the user of the website resides. This raises issues about the location of the collection of the information. However, even if data is not being collected in New Zealand, it may still be within the scope of the Privacy Act 1993.

It will be argued that the Privacy Act 1993 ought to provide a more effective means of controlling certain information held overseas. The traditional territorial approach to jurisdiction is abating in relation to other areas of the law. It is particularly anachronistic when applied to data transferred on the internet.

Larger and larger amounts of personal information are being divulged in an online context. While this information will facilitate transactions, it is also a danger to consumer confidence in online commerce. The cross-border and extraterritorial effect of national data protection laws provides a means of safeguarding the privacy rights of users of the internet, while at the same time providing levels of reassurance necessary for the expansion of online commerce.

**WHAT A DIFFERENCE A BILL OF RIGHTS MAKES?
THE CASE OF THE RIGHT TO PROTEST IN NEW ZEALAND**

JOHN IP

The New Zealand Bill of Rights Act 1990 came into force just over twenty years ago, on 25 September 1990. The advent of this milestone makes it an opportune moment to reflect on the impact of the Bill of Rights on the judicial treatment of the right to protest. This article describes the relevant case law on the right to protest both before and after the Bill of Rights, and then discusses the impact of the Bill of Rights from three perspectives: the increased engagement with comparative law from non-traditional sources, judicial methodology, and outcomes. The article concludes that the Bill of Rights has changed how courts look at protest cases to a discernible if modest degree.

**SIMPLE NULLITY OR BIRTH OF LAW AND ORDER?
THE TREATY OF WAITANGI IN LEGAL AND HISTORIOGRAPHICAL DISCOURSE
FROM 1877 TO 1970**

HELEN ROBINSON

This article explores legal and historiographical understandings of the Treaty of Waitangi, beginning with Prendergast CJ's notorious "simple nullity" statement of 1877 and finishing just before Treaty discourse was revolutionised by Ruth Ross and Māori activists in the early 1970s. The article will focus on answers to the questions of whether the Treaty was the instrument by which the British Crown acquired sovereignty over New Zealand; the nature of its relationship with the New Zealand legal system; and to what extent the promises of the Treaty were kept. There will be an exploration of the apparent contradiction between the dominant legal view of the Treaty's irrelevance and the populist historical view of it as New Zealand's founding document. It will be argued that although there was significant variation within Pākehā understandings of the Treaty during this time, jurists and historians of all stripes shared a common belief that the Treaty did not impose any practical obligation on the Crown, courts, or government of New Zealand.

DELETED WORDS, PRIOR NEGOTIATIONS AND CONTRACT INTERPRETATION

DAVID McLAUHLAN

This article discusses a line of cases that hitherto has not featured in the debate on the contentious issue, yet to be finally resolved in New Zealand, whether evidence of prior negotiations is admissible as an aid to the interpretation of a written contract. These cases concern the question whether words that have been deleted from a written contract prior to its execution are a legitimate aid to the interpretation of the remaining words of the contract. The author argues that his analysis of the often conflicting cases demonstrates the incoherence and lack of transparency in the current law of contract interpretation and adds further weight to the arguments for jettisoning the exclusionary rule.

