

THE BOOKSHELF

BOOK OF THE MONTH

PUBLIC LAW

PUBLIC LAW TOOLBOX

By Mai Chen

A manual for anyone who wants to achieve an outcome in their dealings with or through

the government at all its levels. Mai Chen has long been a proponent of combining traditional legal paths with modern methods of challenging or influencing decisions and her book provides a fascinating range of practical problem-solving tools.

(LexisNexis, March 2012, 978-1-877511-88-2, 1050 pages, paperback, \$184 (GST incl, p&h excl).

COMPANY LAW IN NEW ZEALAND

By Peter Watts, Neil Campbell, Christopher Hare

Reviewed by Andrew Beck*

For many years there was a dearth

of treatises on New Zealand company law. Farrar and Russell's *Company Law in New Zealand* was published in 1985 and related to the Companies Act 1955. The major reforms introduced by the Companies Act 1993 were only covered in practitioner works such as *Morison's Company Law* (Butterworths/LexisNexis), *New Zealand Companies and Securities Law* (CCH) and *Anderson's Company Law* (Brookers/Thomson Reuters) and introductory texts such as *Guidebook to Companies and Securities Law* (CCH).

While practitioners were relatively well served, there was clearly a need for more in-depth discussion of issues and principles relating to the specifically New Zealand-flavoured law of the 1993 Act. It was only in 2008 that a new academic treatise emerged to fill the gap – *Company and Securities Law in New Zealand* (Brookers) under the general

editorship of John Farrar.

It is in that environment that LexisNexis has published a new treatise: *Company Law in New Zealand* by Peter Watts, Neil Campbell and Christopher Hare, a welcome addition to the company law library in New Zealand.

The authors state that they have aimed the work at both students and practitioners, although the former will find it too detailed and the latter not detailed enough. This reflects the inevitable tensions confronting a book of this nature. A student wants to know the basics, with emphasis on the topics of interest to the particular lecturer. A practitioner wants to know the law as stated by the courts, with some pointers as to where there may be room for argument. There are also many areas of company law of importance to practitioners, but which score very low on the scale of academic interest. To meet the needs of both markets is almost impossible.

The book is considerably shorter than *Company and Securities Law* by Farrar et al. One reason for this is that it expressly makes no attempt to cover securities law. That is perhaps understandable in that securities law has become a discipline in its own right. There is a very brief discussion of financial reporting requirements, and no discussion at all of the role and liability of auditors. More significantly from the practitioner's point of view, the treatment of liquidation is severely truncated. While the authors accept that choices have had to be made regarding which topics to include, it is a little surprising that the subject of voidable transactions has been confined to the briefest of discussions while statutory demands are treated in detail; voluntary administration does not even merit a mention.

The emphasis of the book is very much on those topics of academic interest in the traditional discipline of "company law" in a narrow sense. There is extensive discussion of directors' duties – a quarter of the book is devoted to this topic and it has effectively replaced *Directors' Powers and Duties* (LexisNexis, 2009) by Peter Watts. There are also substantial sections on corporate personality,

company contracting, and shareholder remedies. In each of these areas the law is discussed in detail and the authors express their own views on matters that have given rise to debate.

Practitioners advising company clients on basic legal and compliance issues will probably find this book is not tailored to their requirements. On the other hand, those seeking material to support an argument challenging or developing the law will find much of value in this book. The authors have performed a valuable service in assembling the law on points of dispute, and setting out alternative positions.

COMPANY LAW IN NEW ZEALAND by Peter Watts, Neil Campbell and Christopher Hare, LexisNexis, October 2011, 978-1-877511-58-5, 1020 pages, \$171.35 (GST incl, p&h excl). Available in paperback and e-book.

*Andrew Beck is a Wellington barrister and convenor of the New Zealand Law Society's Civil Litigation and Tribunals Committee.



HINDE ON COMMERCIAL LEASES

By GW Hinde

Reviewed by Leo Z Liao*

This is a hard copy version of Chapter 11 of the *Hinde*

McMorland and Sim Land Law in New Zealand looseleaf service. The purpose of the book is to provide legal practitioners with materials from that chapter in one convenient volume, and thus to provide them with up-to-date practical guidance when facing legal issues concerning commercial leases. This is achieved to a large extent. Many commercial transactions involve leases – not only those directly dealing with land, but also those that do not (eg, business sale and purchase and franchises). Lawyers, especially those who practise in the areas of property/commercial law, will find this book very helpful and convenient in their

daily practice.

The book fully covers almost everything that might be involved in commercial leases. Many problems that might arise between landlord and tenant in a commercial context are discussed, with practical guidance for their resolution. The in-depth commentary appropriately refers to the relevant legislation and a wide range of New Zealand, Australian and English cases. It also refers to a variety of secondary materials, including extensive periodical literature and English and Australian textbooks.

The law is stated in accordance with material available up to 11 July 2011. This means the recent and most significant legislation in this area – the Property Law Act 2007 – and some judgments delivered afterwards are included and discussed in the book.

The topics covered are well organised in a logical structure. Chapter 1 briefly describes the relationship of landlord and tenant, essential elements of a lease and the distinction between a lease and a licence, by which the connotation and scope of the concept of lease are precisely conveyed. Chapter 2 discusses types of leases and tenancies. These two chapters provide readers with the big picture of commercial leases, while subsequent chapters go into detailed discussion of each aspect. Chapters 3 to

14 cover matters that might arise from the “birth” to the “death” of a commercial lease. These are: the creation of leases, rights and obligations (covenants) of the lessor and the lessee, rights of renewal and rights to purchase the reversion, extension/variation of leases, assignment of leases and subleases, mortgage of leases, remedies of the lessor and the lessee during the continuance of the lease, and determination of leases and tenancies.

The multi-levelled index at the end of the book, in addition to the logical structure, makes information on a particular topic easy to find. While the main entries are listed alphabetically, contents related to a main entry are listed together under that main entry as sub-entries in alphabetical order. Each main entry/sub-entry refers to paragraph numbers of the main text. Such a considerate arrangement helps busy practitioners find the particular information they need more efficiently.

The writing style is also excellent. The main text is provided in separate but co-related and orderly numbered short paragraphs. Each paragraph focuses on a particular subject and is followed by clear and comprehensive references, including case and legislation citations. It is easy to jump back and forth between the main text and the citations. Although many of the legal concepts and principles concerned are inherently elusive, these

are explained clearly by the use of plain and precise language, and the provision of context. Add generally short sentences and all of these ensure that the book has a good level of readability.

Finally, it is important to note the prominent author of the book, Dr Hinde, is currently an Emeritus Professor of Law at Auckland University and a barrister in Auckland. He has practised and taught land law for more than 50 years and published extensively in this area, which inevitably adds great value to the book, not only academically but also in a practical sense.

For the above reasons *Hinde on Commercial Leases* may be the most comprehensive and integral New Zealand legal text in the area to date. It is a worthwhile handbook for lawyers who practise in the field.

***Hinde on Commercial Leases* by GW Hinde, LexisNexis, August 2011, 978-1-877511-08-0, 614 pages, \$189.75 (GST incl, p&h excl).**

**Dr Leo Zhixiong Liao is a Lecturer in Law in the Faculty of Law, Waikato University. He teaches land law, contract law and commercial transactions. Before joining the university, he was a lawyer in China and New Zealand and practised mainly in commercial/property law, tax law and overseas investment regulation.*



WHAT'S THE HURRY? URGENCY IN THE NEW ZEALAND LEGISLATIVE PROCESS 1987-2010

By Claudia Geiringer,
Polly Higbee and
Elizabeth McLeay

Reviewed by Margaret Wilson*

This excellent book is a must read for anyone interested in New Zealand's constitutional arrangements and how laws are made in Parliament. The book resulted from research funded by the Law Foundation and conducted under oversight of the New Zealand Centre for Public Law and the Rule of Law Committee of the New Zealand Law Society. The acknowledgment of the debt of gratitude by the authors to the Law Foundation can only be endorsed by those with an interest in legal research in New Zealand. Without the Law Foundation, empirical research into New Zealand's legal system would be seriously at risk as research funding in universities becomes harder to find.

This book is about the use of urgency in

the New Zealand Parliament between 1987 and 2010. Or as the authors state: “...this book is an in-depth empirical examination of an important but under-explored aspect of New Zealand's parliamentary procedure that aims to advance understanding of, and promote debate on, a matter of significant public concern.” Even before the book was published, the research had an impact in that the findings were presented to the Standing Orders Committee in its tri-annual review of Standing Orders. Chapter 7 details the approach of the Standing Orders Committee to the research findings and notes that although two of the recommendations were accepted by the committee in its report, overall Parliament has chosen not to substantially change the Standing Orders. For example, the public's right to make submissions on a bill before Parliament can be denied through use of the urgency procedure. The stance of the Standing Orders Committee was disappointing because it represents a lost opportunity to adopt an evidence-based approach to the rules that bind the procedure of Parliament and the making of our laws.

The questions posed by the research

included what exactly is meant by urgency, why do governments use urgency, how much is it used and what were the existing constraints on its use, what effect has MMP had on the use of urgency, whether urgency is the best or appropriate tool to progress parliamentary business, whether we should be worried about the use of urgency and how robust is the regulatory framework that governs its use. The research methodology included both quantitative and qualitative methods. The lack of statistical data required the design of databases to provide information to map the use of urgency. This data was then supplemented with in-depth interviews of participants in the political system. The difficulties in constructing a useful database are not to be underestimated and are fully explained in the text. Although urgency or extraordinary urgency was used 230 times between 1987 and 2010 affecting 2000 items of legislative business relating to more than 1600 bills, these statistics tell us little about the reasons for the urgency – whether it was to progress government business because the sitting times in Parliament had run