On further appeal, recently reported as *Race Relations Board* v. *Charter* [1973] 2 W.L.R. 299, the House of Lords held (Lord Morris of Borth-y-Gest dissenting) that there was no public element where a personally selected group met in private premises. The club which they constituted did not provide services to the public or any section of the public within the meaning of the words "a section of the public" in section 2 of the Act, these being words of limitation. The decision of the Court of Appeal was reversed and the refusal of the club to elect on the grounds of colour was not regarded as unlawful.

Legislation

The only recent legislation affecting constitutional law is the Electoral Amendment Act 1972 which amended the Electoral Act 1956 by inserting section 82(1A). The effect of the amendment is to prevent potential Parliamentary candidates from changing their names within the six months immediately preceding the day of nomination. There is a provision that the section will not apply and nomination will be accepted by the Returning Officer where the name has been adopted by the candidate "in good faith and for good reason and is not indecent or offensive or likely to deceive or cause confusion".

B. V. Harris

CONTRACT

Offers

In *British Car Auctions Ltd.* v. *Wright* (*The Times*, July 13th 1972) which was a case arising in the context of criminal law (as did *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemist (Southern) Ltd.* [1953] 1 Q.B. 401, *Fisher* v. *Bell* [1961] 1 Q.B. 394, and *Partridge* v. *Crittenden* [1968] 1 W.L.R. 1204) the Court accepted the meaning of offer developed in the field of contract and applied it in the interpretation of a statute establishing a criminal offence. This result was as unhappy as in the earlier cases. The Road Traffic Act made it an offence to "offer to sell . . . a motor vehicle" under certain conditions. The company here, according to the Divisional Court, in putting the car up for auction did not "offer to sell" it; they were, in accordance with the long accepted ruling in *Payne* v. *Cave* (1789) 3 T.R. 1893, merely inviting the public to make offers. The purpose of the statute was surely clear enough, but in the light of this ruling it is difficult to imagine anyone being prosecuted successfully under it.

The same court in *Doble* v. *David Grieg Ltd.* [1972] 1 W.L.R. 703 was able to adopt a more realistic approach. The Trade Descriptions Act (U.K.) 1968 s. 6 provides: "A person exposing goods for supply shall be deemed to offer to supply them". In the light of this section the Court found that displaying goods in the shelf of a selfservice store was "offering to supply" goods within the meaning of the Act. Thus in certain circumstances the display of goods may amount to an offer at criminal law, while at the same time it remains an "invitation to treat" in the law of contract. The decision of course in no way weakens the authority of the *Pharmeceutical Society* case (supra).

Mistake

Mistake as to subject matter was raised before Speight J. in *Montgomery & Rennie* v. *Continental Bags (N.Z.) Ltd. & Another* [1972] N.Z.L.R. 884. The defendant, who was the owner of a house at No. 29 McElvie Street, Auckland mistakenly instructed the sale of No. 23. The agreement contained references to No. 23 but legal description was appropriate to No. 29. The mistake was not discovered until just before registration. In an action for rescission of contract and refund of the purchase money, the defence that the sale could not be set aside because "settlement" was complete *(Svanasio v. McNamara* (1956) 96 C.L.R. 186), was rejected. Registration of transfer was held to be the completion of the transaction. There was no doubt on the evidence that there had been no consensus between the parties. The learned judge refrained from expressing an opinion on the plaintiff's suggestion that there had been a total failure of consideration being content to say

> I doubt whether there is total failure of consideration, or its equivalent, for there is a property owned by transferor which fulfils the legal description in the transfer, is of substantial value and purports by the document to be transferred to the purchaser.

Void and illegal contracts

The first case involving the interpretation of the Illegal Contracts Act 1970 came before Wild C. J. in *Combined Taxis Cooperative* v. *Slobbe* [1972] N.Z.L.R. 354 where he held that s. 7(1) prevents a court from validating a contract which is illegal because it has been expressly declared so by another statute. The entry of an unregistered moneylender into a contract is not void or illegal under the Moneylenders Act 1908, and thus the court was able to grant relief and declare the contract enforceable by the Taxi Cooperative which was an unregistered moneylender under the Act.

Interpretation of contracts

Speight J. considered the limitations of the parol evidence rule in permitting extrinsic evidence. He said in *West* v. *Hoyle* [1972] N.Z.L.R. 996, that where there is an ambiguity on the face of the instrument or where a matter agreed on by the parties, and intended by them to be binding and not inconsistent with the written contract, was omitted, then extrinsic evidence would be permitted. In the instant case he admitted evidence of conversations prior to the signing of the document, to clarify ambiguities in it.

Exclusion clauses

Hollier v. *Rambler Motors* [1972] 2 Q.B. 71 bears some resemblance to *McCutcheon* v. *David MacBrayne Ltd.* [1964] 1 All E.R. 430 in that the defendant set up as a defence the normal written terms that had been signed but not read, by the plaintiff on previous occasions. On this point Salmon L. J. had this to say:

> It seems to me that if it was impossible to rely on a course of dealings in *McCutcheon v. David MacBrayne Ltd,* still less would it be possible in this case, when the so-called course of dealings consisted of three or four transactions in the course of five years . . . . The clause upon which the defendants seek to rely cannot in law be imported into the oral contract they made March 1970. (77, 78)

Salmon L. J. went on to distinguish *Alderslade* v. *Hendon Laundry Ltd.* [1945] 1 K.B. 189 on the ground that in the instant case the ordinary man would not expect in the course of normal dealings, to find such a clause, and would indeed be surprised to discover it. "To my mind," he ruled "if the defendants were seeking to exclude their responsibility for a fire caused by their own negligence they ought to have done so in plainer language than used here."

Where the words are clear, however, as in *Gillespie Bros. & Co. Ltd.* v. *Roy Bowles Transport* [1972] 3 W.L.R. 1003, even the defendants' own negligence may be covered by the exception clause which in this case included the words "all claims and demands" fortified by the word "whatsoever". The words here were ruled to show clearly that the trader would indemnify the carrier against all claims without exception.

In *Eastman Chemical International* v. *N.M.T. Trading Ltd. & Eagle Transport Ltd.* [1972] 2 Lloyd's Rep. 25 the divisional court in holding that the destruction of the subject matter of a contract brought the contract to an end and consequently any condition therein failed with it, applied *Harbutt's Plasticine* v. *Wayne Tank & Pump Co.* [1970] 1 Q.B. 447.

The New Zealand Court of Appeal in *Hawkes Bay Aero Club Inc.* v. *McLeod* [1972] N.Z.L.R. 289, considered and reaffirmed its own decision in *Producer Meats Ltd.* v. *Thomas Borthwick and Sons (Australasia) Ltd.* [1964] N.Z.L.R. 700 and stated that the principles of law governing exception clauses in contracts were contained in the *Producer Meats* decision (supra) and the court felt no need to expand on those principles.

R. P. Wolff.

CRIMINAL LAW

Crimes—defence of insanity

Certain dicta in the English case *R.* v. *Clarke* [1972] 1 All E.R. 219 are significant in the construction of the test for insanity in New Zealand. The learned judge held that the defence of insanity applies to accused persons who, by reason of a disease of the mind, are deprived of their power of reasoning. The defence does not apply and has never applied, he said, to those who retain the power of reasoning but who in moments of confusion or absentmindedness fail to use their powers to the full.

Crimes—theft by person required to account

Mead v. *The Queen* [1972] N.Z.L.R. 255 concerned the interpretation of s. 222 Crimes Act 1961. It was argued, on behalf of the appellant, first, that a bank credit can neither be stolen nor converted for it is not an inanimate thing but rather a right, and, secondly, that since the appellant had delivered the cheque for which he was required to account to his bank manager for deposit in the joint account of the company in which he was a partner, and *then* drawn a cheque on that account for his own purposes, that should not be construed as fraudulently converting to his own use or fraudulently failing to account for a part