NOTE: THE LAW REFORM COMMISSION'S FAIRNESS OF TRANSACTIONS BILL

I. *Introduction.*

It is typical of colonial powers to bring their own laws and institutions into their colonies. Papua New Guinea was no exception. In the space of a single lifetime most of the complicated rules of commerce and business were introduced into the simple Melanesian society, perhaps without assessing their suitability. Even today the principles of English common law and equity govern many aspects of Papua New Guinea's law. This does not imply, however, that all the rules of common law as applied here are appropriate to the circumstances of this country. Indeed, the Constitution, *inter alia,* lays down that the principles and rules of common law and equity are not to be applied if they are inconsistent with a Constitutional law or a statute, or are inapplicable or inappropriate to the circumstances of the country, or are inconsistent with customs recognised by the Constitution.[1]

After independence, the legislators of Papua New Guinea have embarked upon the task of law reform, particularly in the areas where the existing structure of common law is likely to be used unfairly by designing persons who are in a position of advantage, financial or otherwise. The Fairness of Transactions Bill is yet another attempt to legislatively realign existing common law principles concerning transactions of an 'economic nature' in the light of foreign precedents and the special needs of the country.

This Note examines the inadequacies of common law and the existing statutory provisions. It also discusses the main provisions of the proposed legislation and its achievements. In the end, it offers some comments and suggestions for alteration of some of the provisions of the proposed legislation.

II. *Inadequacies of the Common Law and Existing Legislation.*

The main object of the proposed legislation is to permit the judicial restructuring of unfair transactions, which is not permitted under the existing common law rules. A contract, once entered into is, generally binding no matter how harsh are its terms.[2]

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1. See Schedule 2.2.

2. There are, however, situations where the courts would let a person off contract, e.g., where it is vitiated by mistake, fraud or undue influence.

Industrial monopolistic concerns and big business organisations more often than not use "standard form contracts"[3] to supply goods and services. If the consumer wants the goods or services he can obtain them only on the terms and conditions of the other party. A monopolistic concern would say, "take it or leave it". Some of the standard form contracts deny all but the shadow of contractual power to the consumer. Even if a particular consumer is alive to the danger, he will find it difficult or impossible to avoid submission to it.[4]

Treitel states that an even less defensible object of the standard form contract has been to exploit and abuse economic power in contracts between suppliers of goods and services and private consumers. The supplier can use a standard form contract to limit or exclude liability to which he would normally be subject. He may have a near or absolute monopoly, or he may belong to an association whose members control the entire supply of some commodity or services, and who all use the same standard form. The consumer can then only accept the standard terms or go without the goods or services.[5]

No doubt, the courts have sometimes refused to enforce harsh contracts on one ground or the other.[6] There also have been legislative attempts to protect an unwary person against possible fraudulent conduct of the supplier of goods or services.[7] But these protections can be, and often are, nullified by the use of exemption clauses by the supplier. Recently, therefore, the legislative thrust has been to give power to the courts to restructure contracts which appear unreasonably unfair to the consumer.

In this regard the most notable PNG legislation is the *Transaction with Natives Act* 1958. Section 8 of this Act, which is the most important provision, empowers the court to restructure unfair contracts. It states:

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3. The terms of standard form contract are set out in printed forms which are used for all contracts of the same kind, and are varied only so far as the circumstances of each contract require. C.H. Treitel, *The Law of Contract* (3rd ed., 1970) 172.

4. See Chesire and Fifoot, *The Law of Contract* (3rd ed., 1974) 23.

5. See Treitel, *op. cit.*, 172-173.

6. See for example *Lloyd Bank v. Bundy* [1975] 1 Q.B. 326; *Schroader Music Publishing Co. Ltd. v. Macanlay* (1974) 1 W.L.R. 1308; *Karsales (Harrow) Ltd. v. Wallis* (1956) 1 W.L.R. 1936

7. See, for example P.N.G. *Sale of Goods Act* 1951, ss. 17, 18, 19, 20 and the *Hire-Purchase Act* 1966, ss. 13.

> If, upon a contract which is unlawful or void as against a native, an action is brought by a native who is a party to the contract, the court which hears the action may, whether the contract has been completely executed by all the parties thereto or not, ignore the terms of the contract and give such a verdict as the court considers equitable.

But this provision is vague and does not give any intelligible or clear guidance as to the criteria to be used for ignoring or over-riding the terms of a contract. Another weakness of the Act is that it provides a very strict procedural requirement for the enforceability of a contract. Section 6 states, *inter alia,* that:

> A contract is unlawful and void as against a native unless the contract is in writing and contains the full names and residences of every party thereto and what is to be done under the contract by each of those persons and unless the contract is approved by an authorised officer.8

Again, the *Transaction with Natives Act* applies only to a contract "to which a native is a party"9 whereas the proposed legislation is not so limited in its operation.10 Lastly, the operation of *Transaction with Natives Act* is considerably limited. Section 6 provides that the Act does not apply to:

> (a) a job contract -
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> (i) which is to be performed within one month from the making thereof; or
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> (ii) which is to be performed on not more than two days in each week and within one year from the making thereof; or
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> (iii) the total consideration which passing to the native parties who have contracted to do the work the subject of the contract does not exceed Fifty Pounds,
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> (b) a contract other than a job contract the consideration for which passing to or from a native or natives does not exceed Fifty Pounds.
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> (c) a contract to which the Administrator, by notice in the Gazette, declares that the provisions of that subsection do not apply.

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8. "Authorised officer" under section 4 means a District Officer or an Officer appointed in writing by the Director to be an authorised officer for the purposes of this Act.

9. See section 4.

10. See draft section 5.

The P.N.G *Hire Purchase Act* also permits re-opening of certain hire-purchase transactions if they appear to the court to be harsh and unconscionable such that the Supreme Court would give relief on an equitable ground.[11] But the Act applies only to and in relation to hire-purchase agreements.[12]

The proposed legislation in attempting to ensure overall fairness of transactions goes much further than the position reached by common law and existing legislation. It also provides for the repeal of the *Transaction with Natives Act*, 1958 and the *Transaction with Natives Act*, 1963.[13]

III. *The Main Provision of the Proposed Legislation.*

The most salutary provision of the proposed legislation is contained in draft section 7. It permits reopening of a transaction by a court if the transaction or any agreement or arrangement that was part of, or was associated with, the transaction was not genuinely mutual or was otherwise unfair to a party.[14]

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11. Section 39 *inter alia* states:

    A court by which transaction is re-opened under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation -

    (a) re-open any account already taken between the parties;

    (b) relieve the hirer and any guarantor from payment of any sum in excess of such sum in respect of the cash price, terms charges and other charges as the court adjudges to be fairly and reasonably payable,

    (c) set aside either wholly or in part, or revise or alter, any agreement made or security given in connection with the transaction;

    (d) give judgment for any party for such amount as, having regard to the relief (if any) that the court thinks fit to grant, is justly due to that party under the agreement; and

    (e) if it thinks fit give judgment against any party for delivery of the goods if they are in his possession.

12. See section 5.

13. Draft section 19.

14. Subsections (1)(a) and (1)(b).

Section 7(3) states:

> For the purposes of Subsection (1) a transaction shall, without limiting the generality of the expression "not genuinely mutual", be deemed not to be genuinely mutual if -
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> (a) a party to the transaction did not understand its nature or terms, or its likely consequences; or
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> (b) a party to the transaction was, in relation to the complainant, in a predominant position (whether economically, socially, personally or otherwise), so that an ordinary person with the background of the complainant was not likely to exercise a true freedom of choice in relation to the transaction; or
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> (c) a party to the transaction had information concerning anything to do with the transaction or its likely consequences that another party did not have; or
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> (e) a party to the transaction was under a mistake or miscalculation as to the transaction or its likely consequences,
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> Unless the court is satisfied that the transaction was in fact entered into on an equal footing in all material respects.

It will be observed that draft section 7(3)(a) by permitting the courts to restructure a transaction where a party did not understand the nature or terms or the likely consequences of a transaction enacts an innovative provision to secure justice for a person in a situation where existing common law is quite unhelpful. At common law some protection is offered to a blind or illiterate person who signs a contract or executes a deed which has been falsely read over to him. His execution in such circumstances is a mere nullity: he can say it is not his deed, *non est factum*. This rule has also been extended to the case of a person who is not blind or illiterate but has been induced by some trick or fraud to put his name to a contract or to execute a deed thinking it is of an entirely different nature from that which in fact it is. An important distinction is drawn, however, at common law between a mistake as to the nature of the contract and a mistake merely to its terms or its consequences. A person who signs a particular type of contract, intending to do so, is bound by it even though its terms may be quite different from what he believed it to be. All too often such fine distinctions result in injustices to one party and unfair advantages to the other. After all, a mistake as to the terms of a contract can be as fundamental as a mistake as to its class or character.

Further, draft section 7(3)(c), by providing that a transaction shall not be genuinely mutual if a party to the transaction had information concerning anything to do with the transaction or its likely

consequences that another party did not have, the proposed legislation appears to strike at the harsh common law rule of *caveat emptor* so frequently upheld by the courts in sale of goods transactions. According to this the seller is under no duty to disclose defects in his goods: the buyer must use his own eyes to discover them. Thus if X buys oats from Y believing them to be old oats, but they are in fact new, X will be held to the contract, even if Y knows that the oats are worth less than X is willing to pay.15 Under the common law rule mere passive acquiescence by the seller in the self-deception of the buyer does not give any right to the latter.16

The proposed legislation also allows re-opening of a transaction in case 'the court is satisfied that there exist new circumstances not anticipated in the earlier proceedings'.17 "Transaction" has been defined to mean any promise, agreement, arrangement or dealing that is intended to have, or that has a legal effect and includes an incomplete transaction.18 But the proposed legislation mainly applies to transactions of an economic nature. Transactions that are primarily of a non-economic nature like those relating to marriage and custody of children have been excluded.19

It is relevant to point out here that at common law, purely social, domestic or family arrangements such as those between friends, relatives or wife and husband do not amount to contract because they are not intended to be legally binding. On the other hand, in all commercial transactions and business arrangements there is a presumption that the parties intend to contract. By providing that the proposed legislation will apply to transactions of an economic nature and by defining the word transaction to mean any promise, agreement etc., that is intended to have, or that has, a legal effect, the proposed legislation appears to affirm the common law position that the courts would give relief only in disputes arising from a commercial transaction which the parties

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15. See *Smith v. Hughes* (1871) L.R. 6 Q.B. 597 , see also *Solle v. Butcher* [1950] 1 K.B. 671.

16. The rule of *caveat emptor*, however, does not justify misrepresentation. Nor will it protect the seller if the mistake of buyer is known to the seller. Thus, if A buys the oats believing that B is contracting to sell him old oats, and B knows that A mistakenly believes so, there is no contract.

17. Section 7(2).

18. Thus contracts which would otherwise be considered defective for the reason that they were, for example, not in writing in violation of the Statute of Frauds, or not supported by consideration, or were void, voidable, or unenforceable, would still be subject to the proposed legislation.

19. Subsection (2).

intended to have legal effect. Thus, even after the passing of the proposed legislation a mere statement to induce a party to contract, mere sales talk or "mere representations" would not give rise to any liability. Gifts and transactions between a governmental body and a non-citizen or 'foreign enterprise'[20] within the meaning of the *National Investment and Development Act* 1974 have also been excluded.[21] Exemption of these latter transactions is perhaps desired to avoid any problems in international relations, or attracting foreign investment.

Draft section 9 contains a very innovative scheme, providing that:

> A person who -
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> (a) derives or derived, or is entitled or was intended to derive, any benefit from the transaction, or
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> (b) suffers or has suffered, or may suffer any disadvantage from the transaction,
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> is entitled to take, or join in taking, any proceedings under the Act in respect of a transaction to which this Act applies under Part III.[22]

It is significant that apparently any person (not necessarily a party to the transaction) who is affected by a 'transaction' can take or join in taking proceedings to restructure the transaction. Such a wide provision appears to substantially abolish the common law rule of privity of contract, which states that only parties to a contract may sue or be sued under the contract.[23]

The further importance of this section is that it also grants the right to a person to take or join in proceedings in respect of a transaction where no action in contract or tort could otherwise be successfully maintained, and also in cases where such an action might perhaps be available in theory but would present serious problems of proof.[24] Under draft section 9, however, a person is entitled to take or join in a proceeding simply on proof that he "suffers, has suffered, or may suffer, any disadvantage from the transaction".

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20. See *National Investment and Development Act* 1974 (No. 77 of 1974), s.2 for a very lengthy definition of "foreign enterprise".

21. See draft sections 4(a) and 5.

22. Part III contains ss.4-8 and is entitled "Re-opening of Transactions".

23. There are many judicially and statutorily recognised exceptions to the rule of privity.

24. E.g., where fraud must be established.

Draft section 11(2), like many industrial enactments forbids representation by a lawyer in proceedings under the proposed legislation unless all other parties to the proceedings are represented by lawyers. This provision appears to be designed to protect those persons who cannot for financial or other reasons obtain the services of a lawyer, and perhaps also to minimise the prolongation of court proceedings. All forms of representation, however, are not barred. draft section 11(1) empowers the court to allow a person to stand in place of another person if he is by law entitled or obliged, or in accordance with custom permitted or expected to do so. This provision, however, does not appear to introduce any significant change in the existing law under which persons other than original parties to a contract are allowed to represent the former25 in a number of situations.26

Another important feature of the proposed legislation is that it confers mediatory and arbitral jurisdiction on the court. Draft section 13 states that in all proceedings the court shall attempt to arrive at an amicable settlement in the first instance by mediation before exercising its jurisdiction under section 14. Draft section 14 reads:

> If in the opinion of the court the attempt at a mediated settlement, in accordance with section 13, of any proceedings under this Act has failed and there is no real likelihood of such a settlement being arrived at within a reasonable time, the court shall proceed to hear and determine the matter and make such order between the parties as seems to it just and in conformity with its primary function, in order to settle the matter of the proceedings (including so far as the court thinks it proper to do so, any transaction dealt with in them or in association with them).

It will be observed that in case the court exercises its jurisdiction under section 13, it would not hear and determine the matter on merits,

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25. The proposed legislation, it will be noted, does not restrict the right to institute legal proceedings to original parties of a transaction. Generally speaking, any person affected by the transaction can bring an action. But to bring an action on one's own behalf without being an original party is different from representing another, whether or not party to the transaction.

26. For example: (1) Where transfer of assignment of contractual rights takes place. Thus upon the death of a party both the rights and duties under most contracts pass to his personal representatives, and many contractual rights may be assigned by the original parties, to other persons in which case the assignees could represent the original parties. (2) An agent may represent his principal. (3) Corporations, companies and other artifical persons created by law are always represented by other persons. (4) Minors, and mentally disordered persons may be represented by others.

but would do so when it exercised its jurisdiction under section 14. When the court does adjudicate, it is directed, by s.12, to balance the advantages and disadvantages to the parties in determining whether and how to restructure the agreement.

Draft section 15 enacts a very useful provision, specifying that "a promise, agreement or arrangement the purpose, intention or effect of which is to exclude or restrict the operation of this Act in relation to a transaction is, to the extent that it attempts to do so, ineffective". Thus, a person who enters into a 'transaction' cannot avoid the provisions of the proposed bill. The reason for the inclusion of draft section 15 is not difficult to see. Both common law and statutory provisions27 give extensive and important protection to the consumer acquiring goods and services. But this protection is often seriously reduced or even nullified by the use of exclusion clauses providing that those terms shall not apply or shall be modified. A seller for example, may exclude himself from liability for the defects in the goods sold by him. In theory, exclusion clauses operated because the consumer voluntarily accepted them in the arms-length negotiations prior to arriving at a contract. But such a justification bears little or no relationship to reality. Often such clauses are contained in a document prepared by the supplier of goods or services and is expressed in very technical language, the full significance of which the consumer is unlikely to appreciate. And even where the consumer is aware of the effect of a particular clause, he often does not have any choice; if he wants the goods or services, he must accept the exclusion clauses.

In some cases the courts have refused to give effect to such clauses,28 in particular, they have refused to enforce those clauses which seek to exclude a fundamental obligation.29 But the judicial protection afforded is far from satisfactory, and in recent years legislative attempts have been made in many countries to invalidate or limit the effect of exclusion clauses.30 Draft section 15, in attempting to prevent the non-application of the provisions of proposed legislation also intends to stop designing persons from taking undue advantage of their superior position.

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27. For example, see P.N.G's *Sale of Goods Act* 1951, ss. 16-20.

28. For example, where the document is not signed, the court may hold that the exclusion clause was not a part of the contract.

29. But see *Suisse Atlantique v. N.V. Rotterdamsche Kolen* [1967] A.C.361.

30. See, for example, England's *Supply of Goods (Implied Terms) Act* 1973, s.4, and Australia's *Trade Practices Act* 1974, s.68.

The proposed legislation would also empower courts to *suo motu* apply the provisions of the proposed legisition without there being any application from the parties. Section 17 provides:

> In any proceedings commenced in any court under any other law but relating to a transaction to which this Act applies, the court may apply the provisions of this Act if it considers that doing so would do justice.

IV. *Comments and Suggestions.*

The main objects of the proposed legislation are, of course, to ensure overall fairness of transactions, afford protection to the unwary and drive out of existence certain objectionable commercial practices. It goes a long way in achieving these objects. Many provisions of the proposed legislation, however, require clarification. Their interpretation is problematic and, therefore, the following comments and suggestions are offered.

The word "transaction" conveys an idea of mutuality, actual, notional or otherwise - which is essential for the formation of a contract. The proposed legislation also defines this term to mean any promise, agreement, arrangement or dealing. Further, draft section 7 permits re-opening of a transaction which is not genuinely mutual. However, other provisions suggest that a unilateral promise, or a situation where there has been no correspondence between offer and acceptance, or a promise by "deed", although it was not signed, sealed or delivered, or an agreement made without consideration (or *nudum pactum*), all could be enforced at the discretion of the court.

It will be noted that draft section 4 provides, *inter alia,* that the proposed legislation will apply to transactions of an economic nature other than gifts, *whether of a reciprocal nature or otherwise* (emphasis added). It may be affirmed that under normal principles of statutory interpretation, the proposed legislation will apply to both transactions of a reciprocal nature as well as transactions of a non-reciprocal nature. Thus in a unilateral contract situation, the offerer could be held liable to the offeree, although the latter performed the condition of the offer without having any knowledge of the offer.

The above interpretation appears to accord well with the provisions of draft section 16, that notwithstanding anything in any law other than "this Act", it is immaterial for the purposes of "this Act" whether or not a transaction is or is not evidenced in writing or under seal, or there was consideration for the promise, or the agreement was made in the form or with formalities required by law. Thus a promise by deed may be given effect at the application of a person in whose favour it was made although he did not know of it at the time and although it was not signed, sealed and delivered. It will be noted that though the *non-obstante* clause of draft section 16 does not override other provisions of the proposed legislation, it would restrict the definition of the word "transaction" given in draft section 1, for it commences with the words - unless a contrary intention appears "transaction" means any promise, agreement, arrangement or dealing.

Draft section 9 also implicitly supports this interpretation, for it permits a person not necessarily a party to a transaction to take or join in taking proceedings under the proposed legislation.

No doubt, the courts will only interfere when the benefits and disadvantages arising out of a transaction need adjustment to achieve overall fairness. But one can conceive of many situations where common law courts would not consider certain agreements to be binding although their enforcement would be quite consistent with the primary functions of the courts under the proposed legislation. What, for example, if a reward is offered for the return of a lost property or for giving some information and the plaintiff who returns the property or gives the information did not know of the reward but nevertheless, claims it at a future date? Clearly, he will not succeed on common law principles for the view is that acceptance in ignorance of an offer should have no effect.31 However, it appears that the plaintiff would succeed if he brings his action under the proposed legislation.

Again, what if A supports B's family for one year during the latter's absence from Papua New Guinea. B on returning home wins a lottery worth K25,000 and promises to give K20,000 to A, but later refuses to do so. At common law A has no remedy. The act of supporting B's family was not done in return for B's promise to pay the K2,000. A's consideration (support of B's family) would be said to be past consideration and therefore could not serve to make the contract.32 However, there is no reason why A should not succeed under the proposed legislation, which does not insist on the presence of consideration.

A third illustration would be where the parents of a boy and the parents of a girl agree that the former should pay a portion of the brideprice after the marriage but such payment is never made. The relatives of the bride could sue for the unpaid brideprice as they are also the "persons who are likely to be affected", within the meaning of draft section 9, whereas under the common law rules they would have no standing to litigate, because there is no privity of contract.33

Many would disagree with the present legislative attempt to whittle down some of the well established doctrines of common law like those which require establishing correspondence between offer and acceptance, that consideration must move from the promisee and it must be an act done in return for the promise, and that a contract cannot, as a general rule confer rights or impose obligations arising under it

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31. See *The Crown v. Clarke* (1927) 40 C.L.R. 227.

32. See *Roscorla v. Thomas* (1842) 3 Q.B. 234, *Anderson v. Glass* (1865) 5 W.W. and A.B. (L) 152; *Re McArdle* [1951] Ch. 669.

33. See *Tweddle v. Atkinson* (1861) 1 B. and S. 393; *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge and Co. Ltd.* [1915] A.C. 847; *Scruttons, Ltd. v. Midland Silicones Ltd.* [1962] A.C. 446; *Beswick v. Beswick* [1968] A.C. 58.

on any person except the parties to it. These rules have their own well thought-out basis. The insistence on the correspondence between offer and acceptance is based on the theory that to create a contract the parties must reach agreement; it is not enough that their wishes happen to coincide. Acceptance must be given in exchange for the offer and, therefore, an offeree cannot assent to an offer unless he knows of its existence. Similarly, the theory of consideration finds support in the principle that a party desiring to enforce an agreement must have contributed a material share to the agreement. The doctrine of privity reflects the general assumption that a contract is the intimate, if not the exclusive, relationship between the parties who have made it.34

The foregoing discussion should not, however, be understood to mean that all these doctrines are sacrosanct and inviolate. In common law countries there have been several legislative and judicial attempts to circumscribe their scope and many civil law countries have refused to strictly enforce them.

The view that a person ignorant of the reward is not entitled to claim it has been criticised as offending one's sense of justice, and modern civil law systems, generally, treat such an offer as binding on the offeror. For many years attempts have been made to widen the doctrine of consideration. As far back as 1782, Lord Mansfield advocated that consideration should be defined broadly so as to take within its scope a pre-existing moral obligation. He enunciated the principle that "where a man is under a moral obligation which no court of law or equity can enforce, and promises, the honesty and rectitude of the thing is the consideration".35 Even the current trend in England is towards an extension of the scope of consideration. In 1937 the English Law Revision Committee recommended that past consideration should be regarded as good consideration and that the rule that consideration must move from the promisee should be abolished. None of these recommendations has so far been implemented by legislation but the writing is definitely on the wall. Again, the doctrine of privity has proved inadequate to meet the needs of modern commerce, and over the years, a number of exceptions have been worked out. The English Law Revision Committee of 1937 also implicitly gives recognition to the rights of a third party where a contract by its express terms purports to confer a benefit directly on such a third party in his own name. In America, some States expressly confer rights upon third party beneficiaries as a class. For example, the California Civil Code provides that a contract made expressly for the benefit of a third person may be enforced by him at any time. Some States give rights of action to certain types of beneficiaries such as beneficiaries of life insurance policies and workers under public contractors performing services under a statutory bond. Further many States would also appear to allow a donee beneficiary to bring an action at law on contracts made for his benefit.

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34. See Cheshire and Fifoot, *op. cit.*, at 505.

35. See C.G. Weeramantry, *The Law of Contract* (1967) 127.

Clearly, the strict rules of the common law must yield to the pressures of changing conditions, changing mores and changing times. Here in Papua New Guinea, the principles of contract must accord with the particular needs of melanesian society. However, complete elimination of the basic doctrines of common law would also create many problems. Under draft section 9 any person who benefits or suffers from a transaction, is entitled to take or join in taking legal proceedings. This provision is too wide - although it may confer rights on a genuinely interested person in respect of transaction to which he was not technically a party, it might also lead to the never-ending and insoluble problems of causation, and will likely open a floodgate of litigation.

Some provisions of the proposed legislation would also give rise to interpretative dilemmas. For example, the provision of section 3(1) that the concept of fairness relates to the principle of the equitable distribution or redistribution of the ultimate benefits and disadvantages of a transaction, would seem to refer to a cluster of ideas and doctrines that will require extensive judicial interpretation.

Further, some of the provisions of the proposed legislation contain drafting errors which could result in problems. For example, draft section 12 speaks of the Primary Function of the courts. However, draft section 13(3) uses the word "tribunal" for the first time. It is difficult to understand why the word "tribunal" was introduced at such a late stage. Further, in section 1 of the arrangement of clauses, the word "court" is mentioned but, for some reason, it has not been defined in the main body of the proposed legislation. One wonders if the draftsmen had in their minds the establishment of a special tribunal or court for the purposes of dealing with matters to which the proposed legislation is intended to apply. But this view conflicts with section 17 which appears to suggest that *any* court would be able to exercise jurisdiction under the proposed legislation. The word "regulation" is also mentioned in the arrangement of clauses part, but not defined in the main body of the proposed legislation. A correction should also be made to the title of draft section 14, "Arbitrated Orders", which is not suitable, because under this section the function of the court is to hear the matter on the merits. A more appropriate title would be, "Determination of Disputes".

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