The Corporations Act remains for present purposes in the penumbra of the existing co-operative scheme legislation. Dr. Gillies' book provides an expeditious means of entry into the labyrinth of the new legislation. It will be found that for most practical purposes the substantive law does not differ under the future regime although the structure and terminology of the new legislation is occasionally at variance.

Notwithstanding the considerable bulk of the legislation, to a great extent the day-to-day problems encountered in company law require consideration of common law principles. As in other works in the field, the greater part of Dr. Gillies' book consists of a consideration and explanation of the application of the legislation in the decided cases.

Whatever the future holds for the general applicability of the Corporations Act, an understanding of the established judge-made law of companies remains essential for the majority of questions arising in the area. Dr. Gillies has set out in straightforward and lucid terms the standard authorities on the subject. He has also provided a very complete coverage of the recent Australian cases by way of cross-reference where detailed explanation is unnecessary (footnotes are not employed, so that all references are incorporated into the text.)

The New Company Law does not seek to explore problem areas of uncertainties in the law, nor to theorise concerning its underlying philosophical basis or desirable future course. Rather, this book provides a simple and direct statement of the state of company law at the present time and upon the coming into effect of the Corporations Act, 1989.

❑ S.P. Epstein.

Obituary - Judge A.F. Tolhurst Q.C.

Judge Tolhurst Q.C., a recent appointee to the District Court Bench, died suddenly on 19th March, 1990.

His Honour was born on 28th March, 1938. He was educated at De la Salle College, Marrickville where he was dux in 1955 and obtained a maximum pass in the Leaving Certificate in that year.

He graduated as a Bachelor of Law, Sydney University in 1960 and later was awarded a Masters degree. His Honour worked for a time in the Public Trustees Office and served articles with Messrs. Rishworth, Dodd & Co., before commencing practice at the Bar in 1961. Initially he practised generally but later specialised in Equity and Revenue Law. He was the author of Stamp and Estate Duties New South Wales, published in 1971. This work became one of the standard texts on the subjects and he a recognised authority in revenue law. He was appointed Queen's Counsel in 1985 and his ability as Counsel was highly regarded.

He was a popular and respected member of Chalfont Chambers, whose door was always open to other members of his floor when assistance with perplexing legal problems was required. In addition to his legal knowledge, His Honour read widely over the whole of his life and gained knowledge in wide areas of learning, apart from the law.

His appointment to the District Court Bench on 15th November, 1989 was received with universal acclaim by the legal profession and it is a matter of great regret to those that have known him that he had but little time to use his considerable talents in service to the community as a Judge of the District Court. ❑ A. McInnes Q.C.

The Out-of-Court Rule

Barristers' Immunity in the Court of Appeal

Paul Donohoe reviews the latest case on liability of barristers.

How far from the courtroom door will the line be drawn?

In the Gianarelli Case 165 CLR 543 the High Court held that barristers were immune from suit for in-court work: Bar News Autumn 1989. The New South Wales Court of Appeal has held that a barrister who failed to do anything about claiming interest upon any damages before judgment was immune from suit: Keefe v. Marks (1989) 16 NSWLR 713. The case is interesting for several reasons.

Are Judges simply looking after their own?

No. Gleeson CJ at 717 D to E identified the underlying policy as extending to persons involved in court proceedings: not only barristers but also judges, jurors and witnesses.

Where does the immunity begin?

On this issue the Court was not unanimous. Gleeson CJ at 718 E to 719 E held that the immunity covered all work involved in what is commonly called a brief to appear, such as:

1. interviewing the plaintiff;
2. interviewing other witnesses;
3. giving advice and making decisions about what witnesses to call and not to call;
4. working up any necessary legal arguments;
5. giving consideration to the adequacy of the pleadings; and if appropriate
6. causing any steps to be undertaken to have the pleadings amended.

He concluded at 719E that all of this was "intimately connected with the work ultimately done in Court" and Meagher JA apparently agreed; 729 A & C.

Priestley JA dissented, and it should be remembered that an application for special leave has been filed. He made these points:

(1) some pleadings may not be so intimately connected with the work in court that they can fairly be said to be a preliminary decision affecting the in-court conduct of the case;
(2) the degree of connection must be assessed; and
(3) there may be a difference between making a decision and an omission.

His Honour did not consider whether the arguments would succeed; only whether they were arguable because the issues arose on a strike-out application a procedure for which he confessed "no particular fondness".

In the present case he thought it arguable that immunity did not extend to "a simple out-of-court omission to consider whether a claim for interest was available." at 725 C to D. ❑