gested are outlined in 1 Adelaide Law Review at p. 78 and the articles there referred to.) Though the test in *Grannall's Case* is often cited, its application is often elusive. Napier C.J. has applied a test of fact and degree (See *Ridland* v. *Dyson* (supra); *Fry* v. *Russo* (supra) and the present case).

Both the test and conclusion are often arbitrary and a different answer could easily be made, as in most s.92 cases, if there were some differences of fact and circumstance to be considered. This is, of course, a most unsatisfactory position.

THE M'NAUGHTEN RULES

Medical Evidence and Insanity

The practical and conceptual difficulties of applying the M'Naughten Rules in the contemporary criminal trial appear to have been accentuated by the judgment of the Privy Council in *Attorney-General for South Australia* v. *Brown*.[1] The extent of the law's dilemma is more fully revealed when it is recognised that the views of the High Court on this matter, which the Privy Council modified considerably in setting aside the judgment of the High Court[2] and restoring the verdict and judgment of the trial court, were themselves open to strong theoretical and practical objections, some of them outlined in the previous issue of this journal.[3] The High Court had developed the view, first expressed in *Sodeman* v. *R.*,[4] that "domination by uncontrollable impulse . . . may afford strong ground for the inference that a prisoner was labouring under such a defect of reason from disease of the mind as not to know that he was doing what was wrong".[5] Such a view is closely related to the High Court's doctrine[6] that if a man is incapable of reasoning with a moderate degree of sense and composure as to the rightness or wrongness of an act, he cannot be said to "know that what he is doing is wrong"—and it is well known that this interpretation of the M'Naughten Rules is by no means the same as that advanced by the English Court of Criminal Appeal in, for example, *R.* v. *Windle*.[7] The Privy Council, however, took no advantage of their opportunity to give some unified direction to the Common Law (if, indeed, there is a Common Law to England, Australia, and the various Australian States), but preferred to dissent from the High Court's view of "irresistible impulse" on only the narrowest of grounds. In brief, their Lordships demanded medical evidence, in every case in which the prisoner's self-control is in doubt, as to the effect of any (medically demonstrable) irresistible impulse on that prisoner's ability to know the nature and quality of his act or that his act is wrong. The law, they said, will not presume any effect without such evidence.

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1. [1960] I W.L.R. 558.
2. *Brown* v. *R.* [1959] Argus L.R. 808; 33 A.L.J.R. 89.
3. I Adel. L.R. 69-74, a full comment which may be thought to anticipate to a great degree (albeit fortuitously) the views of the Privy Council.
4. (1936) 55 C.L.R. 192.
5. *Brown* v. *R.* [1959] Argus L.R. at 814; 33 A.L.J.R. at 93.
6. *Stapleton* v. *R.* (1952) 86 C.L.R. 358.
7. [1952] 2 Q.B. 826.

It might be thought that the issue is unimportant, in that, "irresistible impulse" is not a psychologically meaningful term, and is not likely to be raised by either side at the trial (in view of the well-settled rule that irresistible impulse *per se* does not constitute insanity and is no defence to a criminal charge). Indeed, neither the High Court nor the Privy Council seem to have been convinced that the term need ever have been used by the trial judge at all. But such a view is probably too easy to be correct. The truth is that "irresistible impulse", as an ambiguous and discredited legal notion, is merely the cloak for something far more immediately intelligible and compelling—the inevitable tendency of a jury to ask, in any case where insanity has been discussed, "Could he help doing it?" The law must have some way of dealing with that question. The ordinary way has been to instruct the jury that they should put it out of their minds and answer a different set of questions. The High Court pointed out that the answer to the common-sense question might assist the jury in deciding the legally relevant questions defined in the M'Naughten Rules. The Privy Council have now ruled that (if the matter is raised) medical evidence must be given as to the connection between the conclusion, "He could not help doing it", and the (legally relevant) conclusions, "He did not know the nature and quality of his act" or "He did not know that he was doing wrong". To the tension between the common-sense question and the legal questions there has thus been added a tension between common-sense concepts, legal concepts and the concepts of contemporary psychology.

The present state of the law relating to criminal insanity cannot be said to be conducive to legal certainty, the professional integrity of witnesses, or the sound administration of justice by judge and jury.

CONTRACT

Implied Term in the Sale of Goods

A recent case involving the applicability of an implied term in a contract for work done and materials supplied is that of *Peters* v. *C. W. McFarling Floor Surfacing Ltd.*[1]

Peters had engaged the respondents to lay "Expanko" tiles on the floors of two rooms in his house. The manager of the company inspected the floor and the ventilation under it before commencing operations, and was satisfied that there was no undue dampness in the floor, and that the ventilation was sufficient. On completion of the work, the floor seemed entirely satisfactory. After 24 hours, however, the tiles began to buckle and lift, and the adhesive material had become quite ineffective. Tests of the flooring revealed that some of the wood contained twice the usual percentage of water, and this had caused the tiles to buckle. The excess moisture resulted from the floor being covered, and from insufficient ventilation under the floor. The appellant subsequently had additional ventilation installed, and the floor re-tiled by another company.

1. [1959] S.A.S.R. 261.