

ASSOCIATE PROFESSOR SCOTT OPTICAN
EVIDENCE LAW UPDATE

VIDEO QUESTIONNAIRE

1. Section 30 of the Evidence Act states that improperly obtained evidence is material obtained “in consequence” of some police impropriety. As discussed in the presentation, what is the current approach to this causation requirement and what are its problems/implications for the application of s 30? What is your view of how the causation requirement in s 30 should be applied?

2. In *Marwood v Police*, the NZSC held that the approach to the exclusion of improperly obtained evidence found in s 30 of the Evidence Act — which applies only to criminal cases — could also be applied to evidence offered by police in civil forfeiture proceedings. But the majority made it clear that evidence previously excluded in a related criminal proceeding was unlikely to be excluded in a subsequent forfeiture action. In this regard, what was the basis of the Court’s reasoning in *Marwood* and do you agree? By contrast, what was the approach of Elias CJ and do you agree?

3. Following on from the question above, in *R v Alsford*, the NZSC held that evidence previously ruled inadmissible in a criminal proceeding pursuant to s 30 of the Evidence Act could nonetheless — and in most circumstances — be used by police to support a search warrant in a subsequent investigation. What was the majority’s reasoning/approach to this matter and do you agree?