



PRINCIPLES OF CONTRACT LAW

**ANDREW ROBERTSON
JEANNIE PATERSON**

SEVENTH EDITION

Lawbook Co.

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PREFACE

This book aims to provide an accessible and concise but sophisticated explanation and exploration of contract law. We aim to offer a clear understanding of Australian contract law while also encouraging the reader to think deeply about the law of contract from a range of different perspectives. The book also provides detailed coverage of related obligations and liabilities arising by way of equitable estoppel, restitution for unjust enrichment, misleading conduct and consumer guarantees, which are essential topics of study for students of contract law in Australia. The subject matter of the book might best be characterised, like that of Robert Hillman and Robert Summers' US casebook, as "contract and related obligations".

The book has been substantially revised to take account of developments since the last edition. While minor updates and improvements have been made throughout, the following warrant special mention. In Chapter 3 (Agreement), the discussion of electronic transactions has been substantially revised and updated, and the emoji acceptance case *South West Terminal Ltd v Achter Land & Cattle Ltd* [2023] SKKB 116 discussed. *TRW Ltd v Panasonic Industry Europe GmbH* [2021] EWCA Civ 1558 provides an illuminating perspective on the "battle of the forms". In Chapter 4 (Consideration), the decision in *Ma Hongjin v SCP Holdings Pte Ltd* [2020] SGCA 106; [2021] 1 SLR 304 has enriched discussion of the possible abolition of consideration for contract variations. Chapter 7 (Formalities) also considers *South West Terminal Ltd v Achter Land & Cattle Ltd* [2023] SKKB 116, in which a "thumbs-up" emoji satisfied both the writing and signature requirements.

In Chapter 9 (Estoppel), *Kramer v Stone* [2024] HCA 48 is taken into account in discussion of the elements of equitable estoppel and the requirement of knowledge of reliance, the explanation of estoppel by convention has been improved, and *Guest v Guest* [2022] UKSC 27 is discussed in relation to proprietary estoppel remedies. In Chapter 10, *Redland City Council v Kozik* [2024] HCA 7 informs the discussion of the unjust enrichment or "four questions" framework, failure of consideration, mistake and the defence of good consideration. Chapter 11 (Privity) notes *Hobart International Airport Pty Ltd v Clarence City Council* [2022] HCA 5; (2022) 276 CLR 519 and *Central Coast Council v Norcross Pictorial Calendars Pty Ltd* [2021] NSWCA 75 on exceptions to the privity rule, as well as the changes introduced by the *Property Law Act 2023* (Qld) (which is due to commence on 1 August 2025).

Chapter 12 includes discussion of the incorporation of terms contained in different documents or by hyperlink, including *Blu-Sky Solutions v Be Caring Limited* [2021] EWHC 2619.

Chapter 13 (Construing the terms) has been updated to take account of significant dicta in *Adaz Nominees Pty Ltd v Castleway Pty Ltd* [2020] VSCA 201 on available evidence and *HDI Global Specialty SE v Wonkana No 3 Pty Ltd* [2020] NSWCA 296; (2020) 104 NSWLR 634 on rectification by construction. Chapter 14 (Implied terms) has been substantially revised in light of *Realestate.com.au Pty Ltd v Hardingham* [2022] HCA 39; (2022) 277 CLR 115. *Barton v Morris* [2023] UKSC 3; [2023] AC 684 is also noted.

Chapter 15 (frustration) contains discussion of the interesting case of *Canary Wharf (BP4) Ltd v European Medicines Agency Ltd* [2019] EWHC 335 (Ch), a "Brexit" case.

Chapter 16 covers changes to the unfair contract terms regime introduced by the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* (Cth) to the definition of a small business contract and making a contract incorporating an unfair term a contravention of

the *Australian Consumer Law*. It also covers new case law, including the High Court decision on a class action waiver clause and the territorial reach of s 23 in *Karpik v Carnival Plc* (“*The Ruby Princess*”) [2023] HCA 39.

Chapter 17 contains a more extensive discussion of the consumer guarantee regime, and new case law including *Ethicon Sàrl v Gill* [2021] FCAFC 29; 288 FCR 338 (unsafe products) and *Moore v Scenic Tours Pty Ltd* [2020] HCA 17; (2020) 268 CLR 326 (damages for disappointment and distress) as well as a discussion of remedies against manufacturers where goods are not of acceptable quality, with new case law in *William v Toyota Motor Corporation Australia Limited* [2024] HCA 38 and *Capic v Ford* [2024] HCA 223.

In Chapter 19 (Termination by agreement) the discussion of termination by abandonment has been updated and improved. In Chapter 20 (Failure of a contingent condition) the discussion of waiver takes account of the potential implications of the analysis in *Allianz Australia Insurance Limited v Delor Vue Apartments CTS 39788* [2022] HCA 38; (2022) 277 CLR 445. That significant decision and its implications are discussed in detail in Chapter 25 (Restrictions), along with recent developments in relief against forfeiture, including *Vauxhall Motors Ltd v Manchester Ship Canal Co Ltd* [2019] UKSC 46; [2020] AC 1161.

Chapter 26 considers *Cessnock City Council v 123 259 932 Pty Ltd* [2024] HCA 17 on damages for reliance loss. Chapter 33 (misleading conduct) has been revised and refined in the light of recent case law, including *Viterra Malt Pty Ltd v Cargill Australia Limited* [2023] VSCA 157 (limitation clauses) and *Berry v CCL Secure Pty Ltd* [2020] HCA 27; (2020) 271 CLR 151 on the time at which damages are assessed and subsequent events.

Chapter 34 includes a discussion of the decision on lawful act duress in *Times Travel (UK) Ltd v Pakistan International Airlines Corp* [2021] UKSC 40; [2023] AC 101. Chapter 36 (unconscionable dealing) takes account of *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6; (2022) 276 CLR 1 and *Nitopi v Nitopi* [2022] NSWCA 162; (2022) 109 NSWLR 390. Chapter 38 (unconscionable conduct under statute) has been revised in the light of the High Court decisions in *Stubbings v Jams 2 Pty Ltd* [2022] HCA 6; (2022) 276 CLR 1 and *Productivity Partners Pty Ltd v Australian Competition and Consumer Commission* [2024] HCA 27, dealing in particular with unconscionable conduct found in a system of conduct or pattern of behavior.

In this edition, Andrew Robertson was responsible for Chapters 1–7, 9–11, 13–14, 18–25, 30–32 and 39–42 and Jeannie Paterson was responsible for Chapters 8, 12, 15–17, 26–29 and 33–38. In order to accommodate new content, it has been necessary to renumber the paragraphs throughout the book in this edition.

We gratefully acknowledge the contributions of our former co-authors Peter Heffey (who contributed to the 1st edition) and Arlen Duke (who contributed to the 3rd, 4th and 5th editions). We are grateful to Kirsty Wilson, the Manager of Melbourne Law School’s Academic Research Service and the research assistants working with her (Amelia King, James Cafferky, Nuria Khasim, Dan Beratis and Jack Brookes) for their careful work in identifying and organising primary and secondary material of potential relevance to this new edition. Thanks are also due to the editors at Newgen for their thorough and careful work on the manuscript. It has been a pleasure to work with Stephen Rennie, Senior Product Developer for Thomson Reuters, who oversaw the project with great care and understanding. Andrew Robertson also thanks the Stockholm Centre for Commercial Law for their warm hospitality during the preparation of this edition.

Andrew Robertson
Jeannie Paterson

Stockholm and Melbourne,
November 2024

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