Contract Law: Principles and Context presents the development of contract law through a considered selection of cases that are both authoritative and used as factual examples to explain the law.

The text introduces readers to the nature and range of contracts, the process for making a contract, rights and duties, adjustments to contracts, vitiating factors and unfair conduct, ending contracts, and remedies and restitution. The text considers the historical development of contracts through case law and legislation, then takes the reader to particular issues with contracts as they might arise in real life and navigates a legal pathway through them.

Written in a clear and engaging style, Contract Law provides a fresh, topical and accessible account of the Australian law of contract, and is an invaluable resource for contract law students and practitioners.

Andrew Stewart is the John Bray Professor of Law at the University of Adelaide and works as a consultant with the national law firm Piper Alderman.

Warren Swain is Professor of Law and Deputy Dean in the Faculty of Law at the University of Auckland.

Karen Fairweather is a Senior Lecturer in the Faculty of Law at the University of Auckland.
# CONTENTS

Preface xi
Table of cases xii
Table of statutes xlvii
Acknowledgements lviii

## PART I  INTRODUCTION

### Chapter 1  Some basic questions 3

- What is a contract? 4
- Why should promises be enforced? 8
- How and when did contract law develop? 10
- What are the sources of contract law? 16
- What are the boundaries of contract law? 22
- A law of contract or a law of contracts? 24
- How is this book organised? 24

### Chapter 2  Themes and perspectives 26

- Contracts in practice: inequality of bargaining power 27
- Contracts in practice: the (ir)relevance of contract law 29
- From freedom of contract to welfarism 30
- From doctrine to discretion 32
- From paper to smart contracts: the rise of e-commerce 33
- Codification and harmonisation 34
- Theoretical and critical analysis 36

### Chapter 3  Resolving contractual disputes 40

- Self-help 41
- Resolving disputes by agreement 43
- Assisted dispute resolution 43
### Contents

- Taking disputes to court  
- Choice of law

#### PART II  MAKING A CONTRACT  

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Preparing to make a contract</td>
<td>59</td>
</tr>
<tr>
<td></td>
<td>Preparing and settling the terms</td>
<td>60</td>
</tr>
<tr>
<td></td>
<td>Obligations to disclose information</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>Other regulation of pre-contractual conduct</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>Anticipated contracts that fail to materialise</td>
<td>70</td>
</tr>
<tr>
<td>5</td>
<td>Formation</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>73</td>
</tr>
<tr>
<td></td>
<td>Intention to create legal relations</td>
<td>75</td>
</tr>
<tr>
<td></td>
<td>Establishing agreement</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>Conditional contracts</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>Consideration</td>
<td>92</td>
</tr>
<tr>
<td></td>
<td>Certainty and completeness</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td>Capacity</td>
<td>102</td>
</tr>
<tr>
<td></td>
<td>Formalities</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>Vitiating factors</td>
<td>107</td>
</tr>
<tr>
<td>6</td>
<td>Preliminary agreements</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>Introduction</td>
<td>110</td>
</tr>
<tr>
<td></td>
<td>A question of intention</td>
<td>111</td>
</tr>
<tr>
<td></td>
<td>Agreements to negotiate</td>
<td>115</td>
</tr>
<tr>
<td>7</td>
<td>Protecting reliance: The doctrine of estoppel</td>
<td>118</td>
</tr>
<tr>
<td></td>
<td>Nature and types of estoppel</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>Using equitable estoppel to enforce express or implied promises or assurances</td>
<td>121</td>
</tr>
<tr>
<td>8</td>
<td>The parties to a contract</td>
<td>133</td>
</tr>
<tr>
<td></td>
<td>Who are the parties to a contract?</td>
<td>134</td>
</tr>
</tbody>
</table>
# PART IV ADJUSTING A CONTRACT

## Chapter 13 Varying terms
- How contracts can be varied
- The requirement for fresh consideration
- Policing variations
- Estoppel and waiver
- Rectification
- Statutory powers of variation

## Chapter 14 Transferring rights and obligations
- Assignment of contractual rights
- Assignment of obligations and novation
- Involuntary assignments
- Negotiable instruments

## Chapter 15 Impossibility and change of circumstances
- Introduction
- Defining frustration
- Examples of frustration
- Limits on frustration
- The effects of frustration
- Is the doctrine of frustration unsatisfactory?

# PART V ENDING A CONTRACT

## Chapter 16 Termination of contracts
- How and why contracts can end
- Termination for non-performance: common law rights
- Express rights to terminate
- Implied rights to terminate without cause
- Exercising a right to terminate
- Termination by agreement

## Chapter 17 Consequences of termination
- Effect of termination
PART VI  VITIATING FACTORS AND UNFAIR CONDUCT  327

Chapter 18  Misinformation  329
Pre-contractual statements as warranties  331
Estoppel  331
Rescission for misrepresentation  332
Damages for misrepresentation  341
Statutory prohibitions on misleading or deceptive conduct  343
Mistake  357

Chapter 19  Undue pressure  365
Duress  366
Undue influence  372
Structuring undue pressure  376

Chapter 20  Unconscionability and unfairness  378
Unconscionable bargains  380
The ‘special equity’ for married women  386
Statutory prohibitions on unconscionable conduct  389
Broader controls on unfair contracts  397

Chapter 21  Illegality and public policy  407
Introduction  408
Statutory illegality  409
Public policy and the ex turpi causa principle  412
Restraint of trade  423

PART VII  REMEDIES  431

Chapter 22  Enforcing a contract  433
Specific performance  435
Injunctions  442
It is hard to think of a more foundational legal subject than contract law. Most forms of legal practice involve advising on issues or disputes involving contracts – which is precisely why it is a compulsory area of study in any law degree (and often business degrees as well). But more than that, contracts are central to modern life. For most of us, they provide a framework for earning a living, operating a bank account, accessing the internet, buying daily essentials, and so much more besides.

For all three of us, thinking, writing, talking and advising about this fundamental topic has been a central part of our academic and professional lives. The urge to write this book was born out of a belief that it was possible to produce a relatively concise and practically focused account of the Australian law of contract, and at the same time explore the critical issues in the field that so fascinate us as teachers and scholars. Our aim has been to write a high quality, topical and accessible book that provides insights into current controversies and a wealth of further references for those who wish to dig deeper. It is a work that, we hope, is firmly grounded in the law, practice and policy issues of today, while still explaining the historical evolution of the subject. The text incorporates developments up to September 2018, although a few later references are also included.

There are always many people to thank on a project of this scale. We have received research assistance and feedback from a number of colleagues and students, including (in alphabetical order) Ryan Catterwell, Jordan Curtis, John Eldridge, Daniel Gambitsis, Mark Giancaspro, Ross Grantham, Philip Rocconi, Shauna Roeger, Jessica Viven-Wilksch and Alex Wawryk. We are also grateful for the helpful comments provided by the anonymous reviewers engaged by the publisher to look over our draft chapters. Nina Sharpe was instrumental in commissioning the book, while Lucy Russell has shown wonderful patience in shepherding it through to completion and been an unfailing source of both encouragement and support. We have also appreciated Ellie Gleeson's expert editing, and Jodie Fitzsimmons' help in getting the book to press. But, most of all, we would like to thank our nearest and dearest, who as always have had to put up with some distracted and frantic authors!

Andrew Stewart
Warren Swain
Karen Fairweather
December 2018
<table>
<thead>
<tr>
<th>TABLE OF CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Yearly Review of Modern Awards – Payment of Wages [2017] FWCFB 2729, 233–4</td>
</tr>
<tr>
<td>A v Hayden (No 2) (1984) 156 CLR 532, 408, 415, 417</td>
</tr>
<tr>
<td>Abbot v Lance (1860) Legge 1283, 84</td>
</tr>
<tr>
<td>Aboody v Ryan [2012] NSWCA 395, 386</td>
</tr>
<tr>
<td>ACCC (Australian Competition and Consumer Commission) v ACM Group Pty Ltd (No 2) [2018] FCA 1115, 371, 395</td>
</tr>
<tr>
<td>ACCC v CG Berbati Holdings Pty Ltd [2000] FCA 1376, 390</td>
</tr>
<tr>
<td>ACCC v CG Berbati Holdings Pty Ltd (2005) 214 CLR 51, 384, 390–1</td>
</tr>
<tr>
<td>ACCC v Chrisco Hampers Australia Ltd [2015] FCA 1204, 401–2, 404</td>
</tr>
<tr>
<td>ACCC v CLA Trading Pty Ltd [2016] FCA 377, 401–2, 405</td>
</tr>
<tr>
<td>ACCC v Coles Supermarkets Australia Pty Ltd [2014] FCA 1405, 396–7</td>
</tr>
<tr>
<td>ACCC v Dateline Imports Pty Ltd [2015] FCAFC 114, 351</td>
</tr>
<tr>
<td>ACCC v Excite Mobile Pty Ltd [2013] FCA 350, 395</td>
</tr>
<tr>
<td>ACCC v Get Qualified Australia Pty Ltd [2017] FCA 709, 401, 405</td>
</tr>
<tr>
<td>ACCC v Harrison [2016] FCA 1543, 270</td>
</tr>
<tr>
<td>ACCC v J J Richards &amp; Sons Pty Ltd [2017] FCA 1224, 214–15, 261, 405</td>
</tr>
<tr>
<td>ACCC v Kesbow [2005] FCA 558, 394</td>
</tr>
<tr>
<td>ACCC v Lux Distributors Pty Ltd [2013] FCAFC 90, 393–4</td>
</tr>
<tr>
<td>ACCC v Maritime Union of Australia (2001) 114 FCR 472, 371</td>
</tr>
<tr>
<td>ACCC v Medibank Private Ltd [2018] FCAFC 235, 68</td>
</tr>
<tr>
<td>ACCC v MSY Technology Pty Ltd [2017] FCA 1251, 188</td>
</tr>
<tr>
<td>ACCC v Radio Rentals Ltd (2005) 146 FCR 292, 385, 391</td>
</tr>
<tr>
<td>ACCC v Samton Holdings Pty Ltd (2002) 117 FCR 301, 384, 391</td>
</tr>
<tr>
<td>ACCC v Servcorp Ltd [2018] FCA 1044, 405</td>
</tr>
<tr>
<td>ACCC v South East Melbourne Cleaning Pty Ltd [2015] FCA 257, 395–6</td>
</tr>
<tr>
<td>ACCC v TPG Internet Pty Ltd (2015) 250 CLR 640, 346, 348, 354</td>
</tr>
<tr>
<td>ACCC v Tui Foods Pty Ltd (No 4) [2013] FCA 665, 353</td>
</tr>
<tr>
<td>ACCC v Ultra Tune Australia Pty Ltd [2019] FCA 12, 68, 239</td>
</tr>
<tr>
<td>ACCC v Woolworths Ltd [2016] FCA 44, 354</td>
</tr>
<tr>
<td>Accounting Systems 2000 (Developments) Pty Ltd v CCH Australia Ltd (1993) 42 FCR 470, 351–2</td>
</tr>
<tr>
<td>ACE Insurance Ltd v Trifianowski (2011) 284 ALR 489, 416</td>
</tr>
<tr>
<td>ACE Insurance Ltd v Trifianowski (2013) 209 FCR 146, 170</td>
</tr>
<tr>
<td>Adams v Lindsell (1818) 106 ER 250, 86</td>
</tr>
<tr>
<td>Adamson v NSW Rugby League Ltd (1991) 31 FCR 242, 426</td>
</tr>
<tr>
<td>Adderley v Dixon (1824) 57 ER 239, 436</td>
</tr>
<tr>
<td>Table of cases</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Addis v Gramophone Co Ltd [1909] AC 488, 457, 468</td>
</tr>
<tr>
<td>Adler v Dickson [1955] 1 QB 158, 143</td>
</tr>
<tr>
<td>Administration of Papua New Guinea v Leaby (1961) 105 CLR 6, 78</td>
</tr>
<tr>
<td>Administrative and Clerical Officers Association v Commonwealth (1979) 53 ALJR 588, 443</td>
</tr>
<tr>
<td>Advance Business Finance Pty Ltd v Zip Zap Pty Ltd [2014] FCCA 483, 349</td>
</tr>
<tr>
<td>Adventure Golf Systems Australia Pty Ltd v Belgravia Health &amp; Leisure Group Pty Ltd (2017) 54 VR 625, 238</td>
</tr>
<tr>
<td>Adventure World Travel Pty Ltd v Newsom (2014) 86 NSWLR 515, 243, 314</td>
</tr>
<tr>
<td>Advisory Services Pty Ltd v Augustin [2018] VSCA 59, 62</td>
</tr>
<tr>
<td>AG Securities v Vaughan [1990] 1 AC 417, 169</td>
</tr>
<tr>
<td>AGC (Advances) Ltd v McWhirter (1977) 1 BPR 97,045, 82</td>
</tr>
<tr>
<td>Agricultural and Rural Finance Pty Ltd v Gardiner (2008) 238 CLR 570, 201, 264</td>
</tr>
<tr>
<td>Agrivpay v Byrne [2011] 2 Qd R 501, 388</td>
</tr>
<tr>
<td>Ahern v Power [1935] QWN 22, 216</td>
</tr>
<tr>
<td>Ailakis v Olivero (No 2) [2014] 100 ACSR 524, 98</td>
</tr>
<tr>
<td>Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd [1983] 1 WLR 964, 211</td>
</tr>
<tr>
<td>Air Great Lakes Pty Ltd v K S Easter Holdings Pty Ltd (1985) 2 NSWLR 309, 75, 92, 194</td>
</tr>
<tr>
<td>Akai Pty Ltd v People’s Insurance Co Ltd (1996) 188 CLR 418, 54</td>
</tr>
<tr>
<td>Akmeemanu v Murray (2009) 190 IR 66, 163, 261</td>
</tr>
<tr>
<td>Akron Securities v Iliffe (1997) 41 NSWLR 353, 356</td>
</tr>
<tr>
<td>Alati v Kruger (1955) 94 CLR 216, 42, 338–9</td>
</tr>
<tr>
<td>Alcatel Australia Ltd v Scarcella (1998) 44 NSWLR 349, 241</td>
</tr>
<tr>
<td>Alceon Group Pty Ltd v Rose [2015] NSWSC 868, 389</td>
</tr>
<tr>
<td>Alderslake v Hendon Laundry Ltd [1945] KB 189, 212</td>
</tr>
<tr>
<td>Alexander v Cambridge Credit Corporation (1987) 9 NSWLR 310, 469–71</td>
</tr>
<tr>
<td>Alexander v Rayson [1936] 1 KB 169, 412</td>
</tr>
<tr>
<td>ALH Group Property Holdings Pty Ltd v Chief Commissioner of State Revenue (NSW) (2012) 245 CLR 338, 270</td>
</tr>
<tr>
<td>Allcard v Skinner (1887) LR 36 Ch D 145, 372, 374, 377</td>
</tr>
<tr>
<td>Allcars Pty Ltd v Tweedie [1937] VLR 35, 100</td>
</tr>
<tr>
<td>Allianz Australia Insurance Ltd v Vitale [2014] NSWSC 364, 239</td>
</tr>
<tr>
<td>Allied Mills Ltd v Gaydir Valley Oilseeds Pty Ltd [1978] 2 NSWLR 26, 279</td>
</tr>
<tr>
<td>Allied Westalian Finance Ltd v Wenpac Pty Ltd [1995] WASC 605, 212</td>
</tr>
<tr>
<td>Allphones Retail Pty Ltd v Hoy Mobile Pty Ltd (2009) 178 FCR 57, 310, 314, 396</td>
</tr>
<tr>
<td>Almond Investors Ltd v Kallitree Nursery Pty Ltd [2011] NSWCA 198, 310</td>
</tr>
<tr>
<td>Alistom Ltd v Yokogawa Australia Pty Ltd (No 7) [2012] SASC 49, 63, 191</td>
</tr>
<tr>
<td>Aluminium Co of America v Essex Group, 499 F Supp 53 (1990), 288</td>
</tr>
<tr>
<td>AMEV-UDC Finance Ltd v Austin (1986) 162 CLR 170, 447–8, 450–1</td>
</tr>
<tr>
<td>Amoco Australia Pty Ltd v Rocca Brothers Motor Engineering Co Pty Ltd (1973) 135 CLR 288, 424, 426–7</td>
</tr>
<tr>
<td>Ampol Petroleum Ltd v Mutton (1952) 53 SR (NSW) 1, 443</td>
</tr>
<tr>
<td>Anaconda Nickel Ltd v Tarmoola Australia Pty Ltd (2000) 22 WAR 101, 114–15</td>
</tr>
<tr>
<td>Ancient Order of Foresters in Victoria Friendly Society Ltd v Lifeplan Australia Friendly Society Ltd (2018) 92 ALJR 918, 49</td>
</tr>
</tbody>
</table>
Andrews v Parker [1973] Qd R 93, 413
Ange v First East Auction Holdings Pty Ltd (2011) 284 ALR 638, 160, 162, 280
Angelopoulos v Sabatino (1995) 65 SASR 1, 487
Ankar Pty Ltd v National Westminster Finance (Australia) Ltd (1987) 162 CLR 549, 219, 221, 225, 296, 298
ANZ Executors and Trustees Ltd v Humes Ltd [1990] VR 615, 436
Apple and Pear Australia Ltd v Pink Lady America LLC (2016) 343 ALR 112, 199
Apple Corps Ltd v Apple Computer Inc [1992] FSR 431, 414
Appleby v Myers (1867) LR 2 CP 651, 283–4, 286, 486
Appleby v Pursell [1973] 2 NSWLR 879, 194
APS Satellite Pty Ltd v Ispstar Australia Ltd [2016] NSWSC 1898, 181
Ara Bank Australia Ltd v Sayde Developments Pty Ltd (2016) 934 NSWLR 231, 453
Archibald v Poulet (2017) 53 VR 645, 467
Arbos Ltd v EA Ronaaen & Son [1933] AC 470, 234
Arletban Options Ltd v Easdown (1915) 20 CLR 285, 474
Arnold v Britton [2015] AC 1619, 196
Asbourn v Kirk (1999) 2 Qd R 1, 322
Ashton v Pratt (No 2) [2012] NSWSC 3, 409, 414
Ashton v Pratt (2015) 88 NSWLR 281, 76, 79, 124, 128
ASIC (Australian Securities and Investments Commission) v Accounts Control Management Services Ltd (2012) FCA 1164, 371
ASIC v National Exchange Pty Ltd (2005) 148 FCR 132, 390, 392
Associated Newspapers Ltd v Bancks (1951) 83 CLR 322, 297, 299
Ashley v Austrax Ltd (1999) 197 CLR 1, 23, 157, 175, 475
Ato Controls Pty Ltd v Neutronics Pty Ltd (2009) 25 VR 411, 76, 78
Athens-Macdonald Travel Service Pty Ltd v Kazis [1970] SASR 264, 467
Attorney-General v Blake [2001] 1 AC 268, 460
Attorney-General (NSW) v World Best Holdings (2005) 63 NSWLR 557, 393
Attorney-General of Belize v Belize Telecom Ltd [2009] 1 WLR 1988, 172
Attorney-General of Hong Kong v Humphreys Estate (Queens’ Gardens) Ltd [1987] AC 114, 127
Auburn Shopping Village Pty Ltd v Nelmeer Hoteliers Pty Ltd [2018] NSWCA 114, 313
Austerberry v Oldham Corporation (1885) 29 Ch D 750, 151
Austotel Pty Ltd v Franklins Selfserve Pty Ltd (1989) 16 NSWLR 582, 70, 124, 127
Austra Tanks Pty Ltd v Running (1982) 2 NSWLR 840, 428
Australia and New Zealand Banking Group Ltd v Alirezaz [2004] QCA 6, 385, 388
Australia and New Zealand Banking Group Ltd v Karam (2005) 64 NSWLR 149, 369, 376, 384
Australia and New Zealand Banking Group Ltd v Westpac Banking Corporation (1988) 164 CLR 662, 488
Australia Capital Financial Management Pty Ltd v Linfield Developments Pty Ltd [2017] NSWCA 99, 449, 452
Australia Rong Hua Fu Pty Ltd v Ateco Automotive Pty Ltd [2015] VCAT 756, 187
Australian Broadcasting Commission v Australasian Performing Right Association Ltd (1973) 129 CLR 99, 199
Australian Broadcasting Corporation v Lenab Game Meats Pty Ltd (2001) 208 CLR 199, 380

xiv Table of cases
Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union (2018) 262 CLR 157, 50
Australian Capital Territory v Munday (2000) 99 FCR 72, 425
Australian Competition and Consumer Commission – see ACCC
Australian Estates Pty Ltd v Cairns City Council [2005] QCA 328, 361
Australian European Finance Corporation v Sheehan (1993) 60 SASR 187, 78
Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd (2014) 253 CLR 560, 128, 482, 489
Australian Gourmet Pastes Pty Ltd v IAG New Zealand (2017) 321 FLR 345, 53
Australian Hardwoods Pty Ltd v Commissioner for Railways [1961] 1 WLR 425, 435
Australian joint Stock Bank Ltd v Bailey (No 1) (1897) 18 LR (NSW) 103, 221
Australian Medic-Care Co Ltd v Hamilton Pharmaceutical Pty Ltd [2009] FCA 1220, 460
Australian Securities and Investments Commission – see ASIC
Australian Vintage Ltd v Belcino Investments No 2 Pty Ltd (2015) 90 NSWLR 367, 45
Australian Woollen Mills Pty Ltd v Commonwealth (1954) 92 CLR 424, 6, 73, 75, 93
Australian Woollen Mills Pty Ltd v Commonwealth (1955) 93 CLR 546, 78, 94
Australian Media Holdings Pty Ltd v Telstra Corporation Ltd (1998) 43 NSWLR 104, 229, 236
Autoclenz v Belcher [2011] ICR 1157, 169
Automatic Fire Sprinklers Pty Ltd v Watson (1946) 72 CLR 435, 232
Badat v DTZ Australia (WA) Pty Ltd [2008] WASCA 83, 264
Badman v Drake [2008] NSWSC 1366, 375
Bahr v Nicolay (No 2) (1988) 164 CLR 604, 146
Bain v Fothenburg (1874) LR 7 HL 158, 464
Bainbridge v Browne (1881) 18 Ch D 188, 374
Baker v Corporation of the City of Salisbury (1982) 2 LR 168, 439
Balanced Securities Ltd v Dumayne Property Group Pty Ltd (2017) 53 VR 14, 251, 316
Balduin v Everingham [1993] 1 Qd R 10, 79, 134
Balduin v Icon Energy [2016] 1 Qd R 397, 116
Balfour v Balfour [1919] 2 KB 571, 78
Ballas v Theopilos (No 2) (1957) 98 CLR 193, 84
Balmain New Ferry Co Ltd v Robertson (1906) 4 CLR 379, 161
Baltic Shipping Co v Dillon (1991) 22 NSWLR 1, 161
Baltic Shipping Co v Dillon (1993) 176 CLR 344, 283, 324, 467–8, 484
Bank of Credit and Commercial International SA v Aboody [1990] 1 QB 923, 373
Bank of New South Wales v Rogers (1941) 65 CLR 42, 387
Bank of New Zealand v Equiticorp Finance Ltd (1992) 29 NSWLR 260, 260
Bar-Mordecai v Hillston [2004] NSWCA 65, 374
Barac v Farmall (1994) 53 FCR 193, 415
Barburin v Barburi (1990) 2 Qd R 101, 373
Barrak Corporation Pty Ltd v Jasvill Properties Pty Ltd [2016] NSWCA 32, 313
Barton v Armstrong [1976] AC 104, 366, 368, 370
Barlett v Australia and New Zealand Banking Group Ltd (2016) 92 NSWLR 639, 246, 314
Barto v GPR Management Services Pty Ltd (1991) 105 ALR 39, 345
Baulkham Hills Private Hospital Pty Ltd v G R Securities Pty Ltd (1986) 40 NSWLR 622, 114
Baum v Commonwealth (1906) 4 CLR 97, 455

Table of cases xv
BB Australia Pty Ltd v Karioi Pty Ltd (2010) 278 ALR 105, 424–5
BBB Constructions Pty Ltd v Aldi Foods Pty Ltd [2012] NSWCA 224, 396
Bearingpoint Australia Pty Ltd v Hillard [2008] VSC 115, 445
Beaton v McDowell (1987) 15 NSWLR 162, 93–4
Beersens v Bluescope Distribution Pty Ltd [2012] VSCA 209, 237, 368–9
Behan v Obelon Pty Ltd (1985) 157 CLR 326, 218
Bell v Scott (1922) 30 CLR 387, 302
Bellgrove v Eldridge (1954) 90 CLR 613, 464–5
Benson v Rational Entertainment Enterprises Ltd (2018) 355 ALR 671, 139
Beresford v Pearson Co Ltd [1938] AC 586, 413
Beswick v Beswick [1968] AC 58, 142, 270, 437
Bogumill v Luke (1972) 32 CLR 159, 311
Bolton v Hilda Pty Ltd (1998) 80 FCR 191, 357
Bonnell v Barnet Instruments Ltd [1945] KB 65, 422
BP Exploration Co (Libya) v Hunt (No 2) [1979] 1 WLR 783, 286
BP Refinery (Westernport) Pty Ltd v Hastings Shire Council (1977) 180 CLR 266, 170–1
Bradhurst v Gilbert’s (Australasian) Agency (Vic) Pty Ltd (1952) 86 CLR 209, 411
Braganza v BP Shipping Ltd [2015] 1 WLR 1161, 240
Brambles Holdings Ltd v Batburst City Council (2001) 53 NSWLR 153, 85, 89
Brambles Ltd v Wail (2002) 5 VR 169, 231
Branir Pty Ltd v Ouston Nominees (No 2) Pty Ltd (2001) 117 FCR 424, 80, 166
Brennan v Williams (1996) 186 CLR 71, 66, 172, 176
Brennan v Kangaroo Island Council (2013) 120 SASR 11, 176
Brenner v First Artists’ Management Pty Ltd [1993] 2 VR 221, 71
Bressan v Squires [1974] 2 NSWLR 460, 87
Bridge v Campbell Discount Co Ltd [1962] 2 WLR 439, 448
Bridge v Deacons [1984] AC 705, 427
Brinkibon Ltd v Stabag Stahl Und Stahlwarenhandel Gesellschaft MbH [1983] 2 AC 34, 80, 87
Brishane City Council v Group Projects Pty Ltd (1979) 145 CLR 143, 279
British Steel Corporation v Cleveland Bridge and Engineering Co Ltd [1984] 1 All ER 504, 71, 487
British Telecommunications plc v Telefonica O2 UK Ltd [2014] 4 All ER 907, 240
British Westinghouse Electric & Manufacturing Co Ltd v Underground Electric Railways Co of London [1912] AC 673, 473
Broken Hill Pty Co Ltd v Hapag-Lloyd Akriengesellschaft [1980] 2 NSWLR 572, 142
Brooks v Bernstein [1909] 1 KB 98, 321
Brooks v Burns Philp Trustee Co Ltd (1969) 121 CLR 432, 409, 416
Brown v Smitt (1924) 34 CLR 160, 339
Brown v The Queen (1986) 160 CLR 171, 416
Browning v Morris (1778) 98 ER 1364, 420–1
Bruce v Tyley (1916) 21 CLR 277, 269
Buckridge v Mercantile Credits Ltd (1981) 147 CLR 654, 221
Buckley v Tutty (1971) 125 CLR 353, 423–4, 426
Bull v Australian Quarter Horse Association [2015] NSWCA 354, 171
Bulldogs Rugby League Club v Williams [2008] NSWSC 822, 294
Bunge SA v Nidera BV [2015] 3 All ER 1082, 477
Bunnings Group Ltd v Laminex Group Ltd (2006) 153 FCR 479, 179
Burns v MAN Automotive (Australia) Pty Ltd (1986) 161 CLR 653, 458, 474
Busfree Pty Ltd v Llewellyn [2013] QCA 103, 371
Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592, 345–7, 357
Butler v Fairclough (1917) 23 CLR 78, 97, 457
Bustfree Pty Ltd v Llewellyn [2013] QCA 103, 371
Bryan v FCD (Holdings) Pty Ltd [2000] NSWSC 304, 439
Butts v O’Dwyer (1952) 87 CLR 267, 92
Byers v Dorotea Pty Ltd (1986) 69 ALR 715, 337, 348
Byrne v Australian Airlines Ltd (1995) 185 CLR 410, 100, 170–2, 174–6, 308, 439
Byrne v Van Tienhoven (1880) 5 CPD 344, 83
CA & CA Ballan Pty Ltd v Oliver Hume (Australia) Pty Ltd (2017) 55 VR 62, 363
Cactus Imaging Pty Ltd v Peters (2006) 71 NSWLR 9, 426
Café Du Liban Pty Ltd v Bespoke Garage Pty Ltd [2017] NSWSC 779, 453
Call & Mirror Newspapers Ltd v Humble (1932) 35 WALR 54, 419
Cameron v Hogan (1934) 51 CLR 358, 79
Campbell v Backoffice Investments Pty Ltd (2009) 238 CLR 304, 237, 357
Campbells Cash & Carry Pty Ltd v Postif Pty Ltd (2006) 229 CLR 386, 415
Campomar Sociedad Limitada v Nike International Ltd (2000) 202 CLR 45, 347
Canada Steamship Lines Ltd v The King (1952) AC 192, 211–13, 224
Canzano v FCD (Holdings) Pty Ltd [2000] NSWSC 304, 439
Canning v Temby (1905) 3 CLR 419, 230

Table of cases xvii
Table of cases

Canon Australia Pty Ltd v Patton (2007) 244 ALR 759, 396
Car and Universal Finance Co Ltd v Caldwell [1965] 1 QB 525, 339
Carbone v Metricon Homes Pty Ltd [2018] NSWCA 296, 293
Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256, 5, 77, 80, 86
Carney v Herbert [1985] AC 301, 418
Carr v Blade Repairs Australia Pty Ltd (No 2) (2010) 197 IR 307, 203
Carr v JA Berriman Pty Ltd (1953) 89 CLR 327, 241
Carr v Stephens (1829) 109 ER 281, 224, 300–1
Carrington Slipways Pty Ltd v Patrick Operations Pty Ltd (1991) 24 NSWLR 745, 143
Carter v Boehm (1766) 96 ER 342, 66, 336
Castle Construction Pty Ltd v Fekala Pty Ltd (2006) 65 NSWLR 648, 474
Causer v Browne [1952] VLR 1, 160
Cavendish Square Holding BV v El Makdessi [2015] 3 WLR 1373, 447–51
CCP Australian Airships Ltd v Primus Telecommunications Ltd [2004] VSCA 232, 323–4, 350
Cedar Meats (Australia) Pty Ltd v Five Star Lamb Pty Ltd (2014) 45 VR 79, 320, 449, 452
Century Group v TWT Property Group [2018] NSWSC 1570, 261
Central London Property Trust Ltd v High Trees House Ltd [1947] KB 130, 122, 262–3
CGU Insurance Ltd v AMP Financial Planning Pty Ltd (2007) 235 CLR 1, 239
CGU Workers Compensation (NSW) Ltd v Garcia (2007) 69 NSWLR 680, 243
Chand v Commonwealth Bank of Australia [2015] NSWCA 181, 469
Chaplin v Hicks [1911] 2 KB 786, 466
Chapman v Hoage, 296 US 526 (1936), 219
Chapman v Taylor [2004] NSWCA 456, 278
Chapmans Ltd v Australian Stock Exchange Ltd (1996) 57 FCR 402, 203
Chappell & Co Ltd v Nestlé Co Ltd [1960] AC 87, 96
Charbrook Ltd v Persimmon Homes Ltd [2009] AC 1101, 195, 363
Cherry v Steele-Park (2017) 351 ALR 521, 198
Chief Executive Officer of the Australian Sports Anti-Doping Authority v 34 Players [2014] VSC 635, 46
Ciavarella v Balmer (1983) 153 CLR 438, 303
CIBC Mortgages plc v Pitt [1994] 1 AC 200, 373
Citicorp Australia Ltd v Hendry (1985) 4 NSWLR 1, 451
Civil and Allied Technical Construction Pty Ltd v AJ Quality Concrete Tanks Pty Ltd [2018] VSCA 157, 417
CJ Grais & Sons Pty Ltd v F Jones & Co Pty Ltd [1962] NSWR 22, 148
Clark v Macourt (2015) 253 CLR 1, 473
Clark v University of Lincolnshire and Humberside [2000] 3 All ER 752, 78
Clarke v Dunraven [1897] AC 59, 134
Clarke v Tyler (1949) 78 CLR 646, 105
Clea Shipping Corporation v Bulk Oil International Ltd (The Alaskan Trader) [1984] 1 All ER 129, 315–16
Clegg v Wilson (1932) 32 SP (NSW) 109, 415
Clifford v Vegas Enterprises Pty Ltd (2011) FCAFC 135, 68, 350

© in this web service Cambridge University Press
<table>
<thead>
<tr>
<th>Case Reference</th>
<th>Year</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMF Projects v Riggall</td>
<td>[2014]</td>
<td>QCA 318, 486</td>
</tr>
<tr>
<td>CMG Investments Pty Ltd v Chelliah</td>
<td>(2005)</td>
<td>196 ALR 548, 317</td>
</tr>
<tr>
<td>Coal &amp; Allied Mining Services v MacPherson Pty Ltd</td>
<td>(2010)</td>
<td>185 FCR 383, 292</td>
</tr>
<tr>
<td>Coal Cliff Collieries Pty Ltd v Sijehama Pty Ltd</td>
<td>(1991)</td>
<td>24 NSWLR 1, 115–16</td>
</tr>
<tr>
<td>Coastal Estates Pty Ltd v Melevende</td>
<td>[1965]</td>
<td>VR 433, 311</td>
</tr>
<tr>
<td>Coates v Sarich</td>
<td>[1964]</td>
<td>WAR 2, 323</td>
</tr>
<tr>
<td>Codefla Construction Pty Ltd v State Rail Authority of New South Wales</td>
<td>(1982)</td>
<td>149 CLR 337, 13, 171–2, 193, 196–9, 275–7, 279–80, 283, 286</td>
</tr>
<tr>
<td>Coles Supermarkets Australia Pty Ltd v Australian Retail Freeholds Pty Ltd</td>
<td>(1996)</td>
<td>16 WAR 282, 440</td>
</tr>
<tr>
<td>Coliban Heights Pty Ltd v Citisolar Vic Pty Ltd</td>
<td>(2018)</td>
<td>VSCA 191, 186</td>
</tr>
<tr>
<td>Collin R Price &amp; Associates Pty Ltd v Four Oaks Pty Ltd</td>
<td>(2017)</td>
<td>251 FCR 404, 396</td>
</tr>
<tr>
<td>Collector of Customs v Agfa-Gevaert Ltd</td>
<td>(1996)</td>
<td>186 CLR 389, 190</td>
</tr>
<tr>
<td>Collier v P &amp; MJ Wright (Holdings) Pty Ltd</td>
<td>[2007]</td>
<td>EWCA Civ 1329, 263</td>
</tr>
<tr>
<td>Collins v Godefroy</td>
<td>(1831)</td>
<td>109 ER 1040, 97</td>
</tr>
<tr>
<td>Combe v P &amp; MJ Wright (Holdings) Pty Ltd</td>
<td>[2007]</td>
<td>251 FCR 404, 396</td>
</tr>
<tr>
<td>Collector of Taxation (Cth) v Sara Lee Household &amp; Body Care (Australia) Pty Ltd</td>
<td>(2000)</td>
<td>201 CLR 520, 250–1</td>
</tr>
<tr>
<td>Commonwealth v Director, Fair Work Building Industry Inspectorate</td>
<td>(2015)</td>
<td>258 CLR 482, 6, 49–50</td>
</tr>
<tr>
<td>Commonwealth v Verwayen</td>
<td>(1990)</td>
<td>170 CLR 394, 52, 121, 128–32, 263, 335, 416</td>
</tr>
<tr>
<td>Commonwealth Bank of Australia v Smith</td>
<td>(1991)</td>
<td>42 FCR 390, 60</td>
</tr>
<tr>
<td>Commonwealth Bank of Australia v TLI Management Pty Ltd</td>
<td>[1990]</td>
<td>VR 510, 78</td>
</tr>
<tr>
<td>Conaghan v Cabill</td>
<td>(1932)</td>
<td>26 QIPR 54, 220</td>
</tr>
<tr>
<td>Con-Sian Industries v Norwich Winterthur Insurance Ltd</td>
<td>(1986)</td>
<td>160 CLR 226, 174</td>
</tr>
<tr>
<td>Concrete Constructions (NSW) Pty Ltd v Litewale Pty Ltd</td>
<td>(2002)</td>
<td>170 FLR 290, 352</td>
</tr>
<tr>
<td>Concrete Constructions (NSW) Pty Ltd v Nelson</td>
<td>(1990)</td>
<td>169 CLR 594, 345</td>
</tr>
<tr>
<td>Concut Pty Ltd v Worrell</td>
<td>(2000)</td>
<td>75 ALJR 312, 251, 308</td>
</tr>
<tr>
<td>Condon Investments Pty Ltd v Lesior Properties Pty Ltd</td>
<td>[2012]</td>
<td>NSWCA 184, 234, 465</td>
</tr>
<tr>
<td>Construction, Forestry, Mining and Energy Union v Boral Resources (Vic) Pty Ltd</td>
<td>(2014)</td>
<td>45 VR 571, 371</td>
</tr>
<tr>
<td>Cooden Engineering Co Ltd v Stanford</td>
<td>(1953)</td>
<td>1 QB 86, 451</td>
</tr>
<tr>
<td>Coogee Esplanade Surf Motel Pty Ltd v Commonwealth</td>
<td>(1983)</td>
<td>50 ALR 363, 111</td>
</tr>
<tr>
<td>Cooper v National Provincial Bank Ltd</td>
<td>[1946]</td>
<td>KB 1, 218</td>
</tr>
<tr>
<td>Cooper v Parker</td>
<td>(1885)</td>
<td>15 CB 822, 257</td>
</tr>
<tr>
<td>Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd</td>
<td>[1997]</td>
<td>2 WLR 898, 438–9</td>
</tr>
<tr>
<td>Corbern v Whatmusic Holdings Ltd</td>
<td>[2003]</td>
<td>EWHC 2134 (Ch), 258</td>
</tr>
</tbody>
</table>

Table of cases xix
Cornish & Co v Kanematsu (1913) 12 SR (NSW) 83, 277
Corporate Transport Services Pty Ltd v Toll (2005) 214 ALR 644, 442
Corumo Holdings Pty Ltd v C Itoh Ltd (1991) 24 NSWLR 370, 219
Costa Vraca Pty Ltd v Berrigan Weed & Pest Control Pty Ltd (1998) 155 ALR 714, 350
Couchman v Hill [1947] KB 554, 164
Coulls v Bagot’s Executor and Trustee Co Ltd (1967) 119 CLR 460, 95, 135, 137–8, 141–2, 437
Council of the City of Sydney v Goldspar Australia Ltd (2006) 250 ALR 437, 237
Council of the City of Sydney v West (1965) 114 CLR 481, 209–11
CPU Group Ltd v Stora Enso Australia Pty Ltd [2007] FCAFC 160, 349
Crabb v Arun District Council [1976] 1 Ch 179, 130
Crawford Fitting Co v Sydney Valve & Fitting Co Pty Ltd (1988) 14 NSWLR 438, 308
Craybourn v Sainbourne (1807) 34 ER 1133, 220
Crowe Horwath v Loone (2017) 271 IR 391, 429
Crown Melbourne Ltd v Cosmopolitan Hotel (Vic) Pty Ltd (2016) 260 CLR 1, 121, 125–6, 168
CSR Ltd v Cigna Insurance Australia Ltd (1997) 189 CLR 345, 53
Currie v Misa (1875) LR 10 Ex 153, 95
Curro v Beyond Productions Pty Ltd (1993) 30 NSWLR 337, 425, 444
Curtis v Chemical Cleaning and Dyeing Co [1951] 1 KB 805, 158–9
Cutten v Powell (1795) 101 ER 573, 232, 235, 277
Daebo Shipping Co Ltd v The Ship Go Star (2012) 207 FCR 220, 50
Dalecost Pty Ltd v Guardian International Pty Ltd [2004] WASC 82, 355
Dalgety Wine Estates Pty Ltd v Rizzon (1979) 141 CLR 552, 444
Darlington Futures Ltd v Delco Australia Pty Ltd (1986) 161 CLR 500, 210–13, 225
David Jones Ltd v Lunn (1969) 91 WN (NSW) 468, 115
David Jones Ltd v Willis (1934) 52 CLR 110, 467
David Securities v Commonwealth Bank of Australia (1992) 175 CLR 353, 335, 482, 488
Davies v Beynon-Harris (1931) 47 TLR 424, 103
Davies v Collins [1945] 1 All ER 247, 270
Davies v Commissioner for Main Roads (1968) 117 CLR 529, 212
Davies v Pearce Parking Station Pty Ltd (1954) 91 CLR 642, 212
Davis Contractors Ltd v Firebram Urban District Council [1956] AC 69, 274, 276, 281
Day Ford Pty Ltd v Sciaccia [1990] 2 Qd R 209, 418
Deane v City Bank of Sydney (1904) 2 CLR 198, 221
Deafore v Simpson-Cook (2010) 78 NSWLR 483, 127, 131–2
Demagoge Pty Ltd v Ramensky (1992) 39 FCR 31, 68, 348–9
Department of Public Prosecutions (Vic) v Le (2007) 232 CLR 562, 256
Derry v Peek (1889) 14 App Cas 337, 332
Design Joinery & Doors Pty Ltd v IPower Pty Ltd [2015] SASC 93, 487
Dewijf Pty Ltd v Mateffy Pearl Nagy Pty Ltd (1993) 113 ALR 225, 269
DH MBI Pty Ltd v Manning Motel Pty Ltd [2014] NSWCA 396, 167
DHJPM Pty Ltd v Blackthorn Resources Ltd (2011) 83 NSWLR 728, 124, 127
Diao v Cohen [2016] NSWSC 96, 71
Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd [1965] 1 WLR 623, 165
Dickinson v Dodds (1876) 2 ChD 463, 83
Digi Tech (Australia) Pty Ltd v Brand [2004] NSWCA 58, 350
Dillwyn v Llewelyn (1862) 45 ER 1285, 120

xx Table of cases
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Year</th>
<th>Volume</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dimmock v Hallett (1866)</td>
<td>LR 2 Ch App</td>
<td>21, 333, 335</td>
<td></td>
</tr>
<tr>
<td>Dimskal Shipping Co SA v International Transport Workers Federation (The Erica Luck (No 2))</td>
<td>1992</td>
<td>2</td>
<td>AC 152, 370</td>
</tr>
<tr>
<td>Diploma Construction (WA) Pty Ltd v Best Bar Pty Ltd (No 2)</td>
<td>2015</td>
<td>WASC</td>
<td>230, 90</td>
</tr>
<tr>
<td>Director General of Fair Trading v First National Bank plc</td>
<td>2002</td>
<td>1 AC</td>
<td>481, 402</td>
</tr>
<tr>
<td>Director of Consumer Affairs Victoria v Craig Langley Pty Ltd</td>
<td>2008</td>
<td>VCAT</td>
<td>482, 398</td>
</tr>
<tr>
<td>Director of Consumer Affairs Victoria v Domain Register Pty Ltd</td>
<td>2018</td>
<td>FCA</td>
<td>208, 258</td>
</tr>
<tr>
<td>Director of Consumer Affairs Victoria v Scudly (2013)</td>
<td>2013</td>
<td>A LR</td>
<td>168, 393</td>
</tr>
<tr>
<td>Director of Public Prosecutions (Vic) v Le (2007)</td>
<td>2007</td>
<td>CLR</td>
<td>562, 95–6</td>
</tr>
<tr>
<td>DJ Hill &amp; Co Pty Ltd v Walter H Wright Pty Ltd (1971)</td>
<td>1971</td>
<td>VR</td>
<td>749, 162</td>
</tr>
<tr>
<td>Dockside Holdings Pty Ltd v Rakio Pty Ltd (2001)</td>
<td>2001</td>
<td>SASR</td>
<td>374, 200</td>
</tr>
<tr>
<td>Dobery v Allman (1878)</td>
<td>1878</td>
<td>App Cas</td>
<td>709, 444</td>
</tr>
<tr>
<td>Donis v Donis (2007)</td>
<td>2007</td>
<td>VR</td>
<td>577, 128, 131</td>
</tr>
<tr>
<td>Dowell v Construction Technologies Australia Pty Ltd (2016)</td>
<td>2016</td>
<td>NSWLR</td>
<td>247, 123–4</td>
</tr>
<tr>
<td>Dowen vJr v Le (1946)</td>
<td>1946</td>
<td>CLR</td>
<td>142, 436</td>
</tr>
<tr>
<td>Dorer v Lewkoritz (2013)</td>
<td>2013</td>
<td>NSWCA</td>
<td>452, 269</td>
</tr>
<tr>
<td>Dowling v Rae (1927)</td>
<td>1927</td>
<td>CLR</td>
<td>363, 261</td>
</tr>
<tr>
<td>Downer EDI Ltd v Gillies (2012)</td>
<td>2012</td>
<td>IR</td>
<td>314, 309</td>
</tr>
<tr>
<td>DPN Solutions Pty Ltd v Tridant Pty Ltd (2014)</td>
<td>2014</td>
<td>VSC</td>
<td>511, 396</td>
</tr>
<tr>
<td>DTR Nominees Pty Ltd v Mona Homes Pty Ltd (1978)</td>
<td>1978</td>
<td>CLR</td>
<td>423, 293, 302, 310, 317</td>
</tr>
<tr>
<td>Dunlop Pneumatic Tyre Co Ltd v New Garage &amp; Motor Co Ltd (1915)</td>
<td>1915</td>
<td>AC</td>
<td>79, 448–50</td>
</tr>
<tr>
<td>Dunlop Pneumatic Tyre Co Ltd v Selfridge &amp; Co Ltd (1915)</td>
<td>1915</td>
<td>AC</td>
<td>847, 137</td>
</tr>
<tr>
<td>Dunwoodie v Teachers Mutual Bank Ltd (2014)</td>
<td>2014</td>
<td>BFRA</td>
<td>433, 370</td>
</tr>
<tr>
<td>E K Nominees Pty Ltd v Woolworths Ltd (2006)</td>
<td>2006</td>
<td>NSWCA</td>
<td>1172, 70</td>
</tr>
<tr>
<td>Earl of Aylesford v Morris (1873)</td>
<td>1873</td>
<td>LR Ch App</td>
<td>484, 381</td>
</tr>
<tr>
<td>Earl of Oxford’s Case (1615)</td>
<td>1615</td>
<td>ER</td>
<td>485, 20</td>
</tr>
<tr>
<td>Eastern Extension Australasia &amp; China Telegraph Co Ltd v Federal Commissioner of Taxation (1923)</td>
<td>1923</td>
<td>CLR</td>
<td>426, 224</td>
</tr>
<tr>
<td>Eastwood v Kenyon (1840)</td>
<td>1840</td>
<td>ER</td>
<td>482, 97</td>
</tr>
<tr>
<td>Eccles v Koolan Ire Ore Pty Ltd (No 3) (2013)</td>
<td>2013</td>
<td>WASC</td>
<td>418, 90</td>
</tr>
<tr>
<td>Ecosse Property Holdings Pty Ltd v Gee Dee Nominees Pty Ltd (2017)</td>
<td>2017</td>
<td>CLR</td>
<td>544, 64, 193, 195, 198, 200</td>
</tr>
<tr>
<td>Edgington v Fitzmaurice (1885)</td>
<td>1885</td>
<td>Ch D</td>
<td>459, 334</td>
</tr>
<tr>
<td>Egbert v National Crown Bank (1918)</td>
<td>1918</td>
<td>AC</td>
<td>903, 221</td>
</tr>
<tr>
<td>Elder Dempster &amp; Co v Paterson, Zochinos &amp; Co (1924)</td>
<td>1924</td>
<td>AC</td>
<td>522, 143</td>
</tr>
<tr>
<td>Elder’s Trustee &amp; Executor Co Ltd v Commonwealth Homes &amp; Investment Co Ltd (1941)</td>
<td>1941</td>
<td>CLR</td>
<td>603, 339</td>
</tr>
<tr>
<td>Electricity Generation Corporation v Woodside Energy Ltd (2013)</td>
<td>2013</td>
<td>WASCA</td>
<td>36, 211, 260, 368–9, 371</td>
</tr>
</tbody>
</table>

Electronic Industries Ltd v David Jones Ltd (1954) 91 CLR 288, 262

Electronic Industries Ltd v Harrison & Crossfield (ANZ) Ltd [1966] 2 NSWLR 336, 440

Elkerton v Mylecki [2018] NSWCA 141, 174

Elloboury v Farrow Mortgage Services Pty Ltd (1993) 114 ALR 541, 321

Ellofaiari v Permanent Trustee [2002] NSWCA 413, 384, 389

Empirnall Holdings Pty Ltd v Macbon Paull Partners Pty Ltd (1988) 14 NSWLR 523, 85

Energy World Corporation Ltd v Maurice Hayes & Associates Pty Ltd (2007) 259 ALR 457, 308

Entores v Miles Far East Co [1955] 2 QB 327, 87

Equitcorp Finance Ltd v Bank of New Zealand (1993) 32 NSWLR 50, 369–70, 376

Equity Trustees Executors & Agency v New Zealand Loan and Mercantile Agency Co Ltd [1940] VLR 201, 220

Equivcorp Pty Ltd v Glengallan Investments Pty Ltd (2004) 218 CLR 471, 75, 165

Equivcorp Pty Ltd v Haxton (2012) 246 CLR 498, 20, 166, 269, 408, 418, 420, 483, 489

Ermogenous v Greek Orthodox Community of South Australia Inc (2002) 209 CLR 95, 74, 76

Ernest Beck and Co v K Szymanski and Co [1924] AC 43, 209

Esanda Finance Corporation Ltd v Peat Marwick Hungerfords (1997) 188 CLR 241, 342

Esanda Finance Corporation Ltd v Plessng (1989) 166 CLR 131, 450

Esso Australia Resources Ltd v Commissioner of Taxation (1999) 201 CLR 49, 20

Esso Australia Resources Pty Ltd v Southern Pacific Petroleum NL [2005] VSCA 228, 242–5


ET Fisher & Co Pty Ltd v English, Scottish & Australian Bank Ltd (1940) 64 CLR 84, 257

Evans v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs (2012) 289 ALR 237, 76, 79


Evans Marshall & Co Ltd v Bertola [1973] 1 WLR 349, 437

Everet v Williams (1725) 9 LQR 197, 409

Experience Hendrix LLC v PPX Enterprises Inc [2003] 1 All ER (Comm) 830, 460

Export Credits Guarantee Department v Universal Oil Products Co [1983] 1 WLR 339, 448

Fabsert Pty Ltd v ABB Warehousing (NSW) Pty Ltd (2008) 176 IR 169, 265

Factory 5 Pty Ltd v Victoria [2012] FCAFC 150, 112

FAI General Insurance Co Ltd v Sherry (2002) 225 LSJS 141, 413

Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd (2015) 228 FCR 346, 170

Fair Work Ombudsman v Ramsey Food Processing Pty Ltd (2011) 198 FCR 174, 170

Falko v James McEwan & Co Pty Ltd [1977] VR 447, 468

Famestock v Body Corporate for No 9 Port Douglas Road Community Title Scheme 24368 [2013] QCA 354, 237

Fast Fix Loans Pty Ltd v Samardzic [2011] NSWCA 260, 384

Fast Funds Pty Ltd v Coppola [2010] NSWSC 470, 406

FC Shepherd v Jerrom [1986] ICR 802, 278

Federal Commerce and Navigation Co Ltd v Molena Alpha Inc [1979] AC 757, 301

Felthouse v Bindley (1862) 142 ER 1037, 85

Fencott v Muller (1983) 152 CLR 570, 51

Ferme v Kimberley Discovery Cruises Pty Ltd [2015] FCCA 2584, 324, 399, 403

xxii Table of cases
Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32, 283
Finch v Sayers [1976] 2 NSWLR 540, 278
Finnucane v NSW Egg Corporation (1988) 80 ALR 486, 356
Fitzgerald v Masters (1956) 95 CLR 420, 102, 200, 317, 440
Fletcher v Minister for Environment and Heritage (1999) 73 SASR 474, 83
Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd [2002] 2 NZLR 433, 63, 112–13
Flinn v Finn [1999] 3 VR 712, 125
Fokes v Beer (1884) 9 App Cas 605, 257–8, 263
Foran v Wight (1989) 168 CLR 385, 121, 232, 301, 311, 314, 324
Ford v Perpetual Trustees Victoria Ltd (2009) 75 NSWLR 42, 483
Fragomeni v Fogliani (1968) 42 ALJR 263, 440
Franklins Pty Ltd v Metcas Trading Ltd (2009) 76 NSWLR 603, 22, 64, 198, 201, 264
Freedom v AHR Constructions Pty Ltd [1987] 1 Qd R 59, 483
Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480, 136
Frier v Australian Postal Corporation (No 2) [2012] NSWSC 61, 396
Fu Tian Fortune Pty Ltd v Park Cho Pty Ltd [2018] NSWCA 282, 270
Fujie Seal Europe Ltd v Catalytic Combustion Corporation [2005] EWHC 1659 (TCC), 148
Fullerton Nominees Pty Ltd v Darmago [2000] WASCA 4, 414
Futuretronics International Pty Ltd v Gadzhis [1992] 2 VR 217, 82, 352
Gall v Mitchell (1924) 35 CLR 222, 440
Gandy v Gandy (1885) 30 Ch D 57, 136
Gange v Sullivan (1966) 116 CLR 418, 92, 264, 309
Gardam v George Wills & Co Ltd (1988) 82 ALR 415, 353
Gardiner v Agricultural and Rural Finance Ltd [2007] NSWCA 235, 203
Garry Rogers Motors (Australia) Pty Ltd v Subaru (Australia) Pty Ltd [1999] FCA 903, 314
Gate Gourmet Australia Pty Ltd v Gate Gourmet Holding AG [2004] NSWSC 149, 140
Gates v City Mutual Life Investments Pty Ltd (1986) 160 CLR 1, 168, 354
GE Commercial Corporation (Australia) Pty Ltd v Nickols [2012] NSWSC 562, 437
GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd (2003) 128 FCR 1, 242, 250, 260
Geebung Investments Pty Ltd v Varga Group Investments Pty Ltd (No 8) [1995] 7 BPR 14,551, 111
George v Clanning (1979) 28 ALR 57, 229
George Mitchell (Chesterhall) Ltd v Finney Lock Seeds Ltd [1982] 3 WLR 1036, 62, 206, 208
George Mitchell Ltd v Finney Lock Seeds Ltd [1983] 2 AC 803, 211
Georges v Wieland [2009] NSWSC 733, 436
Gerace v Auzhair Supplies Pty Ltd (2014) 87 NSWLR 435, 52
Geraghty v Minter (1979) 142 CLR 177, 425
Gibaud v Great Eastern Railway Co [1921] 2 KB 426, 209
Gibbons v Proctor (1891) 64 LT 594, 81
Gibbons v Wright (1954) 91 CLR 423, 104
Gibbons Holdings Ltd v Wholesale Distributors Ltd [2008] 1 NZLR 277, 201
Gibson v Manchester City Council [1978] 1 WLR 520, 89

Table of cases xxiii
Table of cases

Gibson v Manchester City Council [1979] 1 WLR 294, 89
Gilbert-Ash (Northern) Ltd v Modern Engineering (Bristol) Ltd [1974] AC 689, 233
Giliberto v Kenny [1985] 57 ALJR 283, 163, 194
Gillespie Brothers & Co Ltd v Ray Bowles Transport Ltd [1973] QB 400, 212
Giumelli v Giumelli (1999) 196 CLR 101, 130–1
Glassbrook v Glamorgan County Council [1925] AC 270, 97
Glebe Island Terminals Pty Ltd v Continental Seagram Pty Ltd (The Antwerp) (1993) 40 NSWLR 206, 212, 225
Global Sportsman Pty Ltd v Mirror Newspapers Pty Ltd [1984] 2 FCR 82, 351–2
Gnych v Polish Club Ltd (2015) 255 CLR 414, 408, 410
Godecke v Kirwan (1973) 129 CLR 629, 101, 114, 116
Golden Strait Corporation v Nippon Yusen Kabushika Kaisa (The Golden Victory) [2007] 2 AC 353, 477
Goldman Sachs J B Were Services Pty Ltd v Nikolich (2007) 163 FCR 62, 163
Goldsborough Mort & Co Ltd v Tolson (1909) 10 CLR 470, 204
Goldsborough Mort & Co Ltd v Quinn (1910) 10 CLR 674, 84
Goodman Fielder Consumer Foods Ltd v Cospak International Pty Ltd [2004] NSWSC 704, 90
Goodwin v National Bank of Australasia Ltd (1968) 117 CLR 173, 218, 336
Google Inc v Australian Competition and Consumer Commission (2013) 249 CLR 435, 353
Gordon v Gordon (1817) 36 ER 910, 238
Gordon v McGregor (1908) 8 CLR 316, 166
Gordon v Selico Co Ltd [1986] 1 EGLR 71, 335
Goss v Nugent (1833) 110 ER 713, 165
Gough v South Sky Investments Pty Ltd [2012] QCA 161, 297
GR Securities v Baulkham Hills Private Hospital Pty Ltd (1986) 40 NSWLR 631, 112
Graham v Freer (1980) 35 SASR 424, 340
Graham v Royal National Agricultural and Industrial Association of Queensland [1989] 1 Qd R 624, 212
Gramotnev v Queensland University of Technology [2015] QCA 127, 163, 245
Grant v Australian Knitting Mills [1936] AC 85, 228
Grave v Blaszczyk Holdings Pty Ltd [2012] NSWCA 329, 115
Gray v Motor Accident Compensation Commission (1998) 196 CLR 1, 457
Great Peace Shipping Ltd v Tswiriris (International) Ltd [2003] QB 679, 361
Green v Somerville (1979) 141 CLR 594, 439
Grey v Australian Motorists & General Insurance Co Pty Ltd [1976] 1 NSWLR 669, 268
Grocon Constructors (Vic) Pty Ltd v APN DF2 Project 2 Pty Ltd [2015] VSCA 196, 171–2
Guild & Co v Conrad [1894] 2 QB 885, 215
Gumland Property Holdings Pty Ltd v Duffy Brothers Fruit Market (Campbelltown) Pty Ltd (2008) 234 CLR 257, 295–6, 307
Gutnick v Indian Farmers Fertiliser Cooperative Ltd (2016) 49 VR 732, 46
Gwan Investments Pty Ltd v Outback Health Screenings Pty Ltd (2010) 106 SASR 167, 171, 464
GWC Property Group Ltd v Higginson [2014] QSC 264, 449
H v H (1983) 13 Fam Law 180, 415
H Dakin & Co Ltd v Lee [1916] 1 KB 566, 235
H and E Van der Sierren v Cibernetics (Holdings) Pty Ltd (1970) 44 ALJR 157, 210
Hadley v Baxendale (1854) 156 ER 145, 463, 469–71
Hagenfelds v Saffron (Unreported, Supreme Court of New South Wales, Powell J, 26 March 1986), 419
Halford v Price (1960) 105 CLR 25, 203
Hallett v Earl of Dudley [1907] 1 Ch 590, 438
Hall v Buss (1960) 104 CLR 206, 100
Halloran v Firth (1926) 38 CLR 261, 282
Hamer v Sidway, 27 NE 256 (1891), 95
Hamilton v Watson (1845) 8 ER 1339, 218
Halmlin v Great Northern Railway Co (1856) 156 ER 1296, 467
Hanna v Raoul [2018] NSWCA 201, 104, 386
Hannover Life Re of Australasia Ltd v Sayseng [2005] NSWCA 214, 140
Harbottle Brown & Co Pty Ltd v Halstead [1968] 3 NSWLR 493, 415
Hardie v Shadbolt [2004] WASCA 175, 478
Hardy v Motor Insurers’ Bureau [1964] 2 QB 745, 413
Harris v Burrell & Family Pty Ltd [2010] SASCFC 12, 136
Harris v Carter (1854) 118 ER 1251, 252
Harris v Nickerson (1873) LR 8 QB 286, 82
Harris v Watson (1791) 170 ER 94, 252
Harrison v Harrison [2013] VSCA 170, 131
Hart v McDonald (1910) 10 CLR 417, 167, 227
Hartigan v International Society for Krishna Consciousness Inc [2002] NSWSC 810, 374
Hartley v Ponsonby (1857) 119 ER 1471, 252–3
Harvelea v Royal Trust Co of Canada [1986] AC 207, 83
Hasham v Zenab [1960] AC 316, 435
Hatcher v White (1953) 53 SR (NSW) 285, 419, 421
Haycn Pty Ltd v Webster [2005] NSWCA 182, 345, 351
Hawcroft & Hawcroft General Trading Co Pty Ltd [2016] NSWSC 555, 361
Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465, 342
Heitmann v Commonwealth (1938) 38 SR (NSW) 691, 174
Helmos Enterprises Pty Ltd v Jaylor Pty Ltd [2005] NSWCA 235, 76
Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (No 1) (1988) 39 FCR 546, 68, 348
Henry Kendall & Sons v William Lillico & Sons Ltd [1969] 2 AC 31, 161–2
Henithorn v Fraser [1892] 2 Ch 27, 87
Heppingstone v Stewart (1910) 12 CLR 126, 105
Herbert Morris Ltd v Saxelby [1916] 1 AC 688, 426
Hercy v Birch (1804) 32 ER 640, 437
Hermann v Charlesworth [1905] 2 KB 123, 417
Horne Bay Steam Boat Co v Hutton [1903] 2 KB 683, 278
Heyman v Darwins Ltd [1942] AC 356, 320
Highmist Pty Ltd v Tricare Ltd [2005] QCA 357, 310
Hill v Van Erp (1997) 188 CLR 159, 23, 147
Hilliam v Iacullo (2015) 90 NSWLR 422, 231, 316
Hillas & Co Ltd v Arcos Ltd (1932) 43 LJ L Rep 359, 100, 204
Hillston v Bar-Mordecai [2003] NSWSC 89, 389

Table of cases xxv
Hirachand Punamchand v Temple [1911] 2 KB 330, 258
Hirsch v Zinc Corporation Ltd (1917) 24 CLR 34, 415
Hirtenstein v Hill Dickinson LLP [2014] EWHC (Comm) 2711, 463
Hobbs v London and South Western Railway Co (1875) LR 10 QB 111, 467
Hobbs v Petersham Transport Co Pty Ltd (1971) 124 CLR 220, 227
Hochster v De La Tour (1853) 118 ER 922, 295, 300
Hoentig v Isaac [1952] 2 All ER 176, 234–5
Holidaywise Koala Pty Ltd v Queenslodge Pty Ltd [1977] VR 164, 417
Holland v Wiltshire (1954) 90 CLR 409, 304, 306
Hollier v Rambler Motors (AMC) Ltd (1972) 2 QB 71, 212
Hollis v Vahu Pty Ltd (2001) 207 CLR 21, 170
Holman v Johnson (1775) 98 ER 1120, 412–13
Holmes v Jones (1907) 4 CLR 1692, 337
Homburg Houtimport BV v Agrosin Private Ltd (The Starsin) [2004] 1 AC 715, 145
Homestake Australia Ltd v Metals Minerals NL (1991) 11 WAR 435, 194
Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26, 7, 295, 298–9
Hooper Bailie Associated Ltd v Natcom Group Pty Ltd (1992) 28 NSWLR 194, 416
Hope v RCA Photophone of Australia Pty Ltd (1937) 59 CLR 348, 193
Hope v Walter [1900] 1 Ch 257, 440
Hope Island Resort Holdings Pty Ltd v Jefferson Properties (Qld) Pty Ltd [2005] QCA 315, 204
Hornsby Building Information Centre Pty Ltd v Sydney Building Information Centre (1978) 140 CLR 216, 346
Horton v Jones (1934) 34 SR (NSW) 359, 106
Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41, 237–8
Hospitality Group Pty Ltd v Australian Rugby Union Ltd (2001) 110 FCR 157, 460
Houghton v Arms (2006) 225 CLR 553, 345–6
Howard E Perry & Co Ltd v British Railways Borad [1980] 24 WLR 1375, 436
Houe v Teedy (1927) 27 SR (NSW) 301, 466
Howie v New South Wales Lawn Tennis Ground Ltd (1956) 95 CLR 132, 151
Howy’s Pty Ltd v Spencer (1919) 27 CLR 133, 165, 167
Hughes v Metropolitan Railway Co (1877) 2 App Cas 439, 121–2
Hughes Aircraft Systems International v Airservices Australia (1997) 146 ALR 1, 83, 241
Hungerfords v Walker (1989) 171 CLR 125, 477–8
Huntingdale Village Pty Ltd v Corrs Chambers Westgarth [2018] WASCA 90, 199
Hunley v McDonald’s Australia Ltd [1999] FCA 1728, 393
Huyton SA v Peter Cremer GmbH & Co [1999] 1 Lloyd’s Rep 620, 370
Hyde v Wrench (1840) 49 ER 132, 85
Hyundai Heavy Industries Co Ltd v Papadopoulos [1980] 1 WLR 1129, 321
I & L Securities Pty Ltd v HTW Valuers (Brisbane) Pty Ltd (2002) 210 CLR 109, 356
IAC (Leasing) Ltd v Humphrey (1972) 126 CLR 131, 448
IceTV Pty Ltd v Ross [2007] NSWSC 635, 429
Idt Enterprises Pty Ltd v Classified Transport Pty Ltd (2011) 111 SASR 155, 352
Indico Holdings Pty Ltd v TNT Australia Pty Ltd (1990) 41 NSWLR 281, 213–14
Informax International Pty Ltd v Clarius Group Ltd (2012) 207 FCR 298, 426
Ingram v Little [1961] 1 QB 31, 360
Inn Leisure Industries Pty Ltd v DF Mccloy Pty Ltd (No 1) (1991) 28 FCR 151, 348
Insight Vacations Pty Ltd v Young (2010) 78 NSWLR 681, 468

xxvi Table of cases
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Year</th>
<th>Volume/Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insight Vacations Pty Ltd v Young</td>
<td>2011</td>
<td>(2011) 243 CLR 149, 55</td>
</tr>
<tr>
<td>Integrated Computer Services Pty Ltd v Digital Equipment Corporation</td>
<td>1988</td>
<td>(Australia) Pty Ltd (1988) 5 BPR 97,326, 88–9</td>
</tr>
<tr>
<td>Interstar Wholesale Finance Pty Ltd v Integral Home Loans Pty Ltd</td>
<td>2008</td>
<td>(2008) 257 ALR 292, 448</td>
</tr>
<tr>
<td>IOOF Australia Trustees (NSW) Ltd v Tantipech</td>
<td>1998</td>
<td>(1998) 156 ALR 470, 357</td>
</tr>
<tr>
<td>IOOF Building Society Pty Ltd v Foxxden Pty Ltd</td>
<td>2009</td>
<td>(2009) VSCA 138, 308</td>
</tr>
<tr>
<td>Ipstar Australia Pty Ltd v APS Satellite Pty Ltd</td>
<td>2018</td>
<td>(2018) 329 FLR 149, 393, 396</td>
</tr>
<tr>
<td>Israel v Foreshore Properties Pty Ltd</td>
<td>1980</td>
<td>(1980) 30 ALR 631, 220</td>
</tr>
<tr>
<td>Ivanof v Phillip M Levy Pty Ltd</td>
<td>1971</td>
<td>(1971) VR 167, 338</td>
</tr>
<tr>
<td>J &amp; S Holdings Pty Ltd v NRMA Insurance Ltd</td>
<td>1982</td>
<td>(1982) 41 ALR 539, 368</td>
</tr>
<tr>
<td>J Fenwick &amp; Co Pty Ltd v Federal Steam Navigation Co Ltd</td>
<td>1945</td>
<td>(1945) 44 SR (NSW) 1, 203</td>
</tr>
<tr>
<td>J Lauritzen AS v Wijsmuller (The Super Servant Two)</td>
<td>1990</td>
<td>(1990) 1 Lloyd’s Rep 1, 280</td>
</tr>
<tr>
<td>J Spurling Ltd v Bradshaw</td>
<td>1956</td>
<td>(1956) 1 WLR 461, 161</td>
</tr>
<tr>
<td>Jackson v Horizon Holidays Ltd</td>
<td>1975</td>
<td>(1975) 1 WLR 1468, 141</td>
</tr>
<tr>
<td>Jadalcal v Minson (No. 2)</td>
<td>2011</td>
<td>(2011) WASC 362, 149</td>
</tr>
<tr>
<td>James Miller &amp; Partners Ltd v Whitworth Street Estates Ltd</td>
<td>1970</td>
<td>(1970) AC 583, 201</td>
</tr>
<tr>
<td>Janus v Chama Motors Pty Ltd</td>
<td>2011</td>
<td>(2011) NSWCA 238, 477</td>
</tr>
<tr>
<td>Jarris v Swan Tours Ltd</td>
<td>1973</td>
<td>(1973) QB 233, 468</td>
</tr>
<tr>
<td>JC Williamson Ltd v Lubeck</td>
<td>1931</td>
<td>(1931) 45 CLR 282, 106, 173, 435, 438–9</td>
</tr>
<tr>
<td>Jenyns v Public Curator (Qld)</td>
<td>1953</td>
<td>(1953) 90 CLR 113, 374</td>
</tr>
<tr>
<td>fireb v Western Export Services</td>
<td>2011</td>
<td>(2011) NSWCA 137, 200</td>
</tr>
<tr>
<td>Jf Savage &amp; Sons Pty Ltd v Blakney</td>
<td>1970</td>
<td>(1970) 119 CLR 435, 164</td>
</tr>
<tr>
<td>JMcAllan (Merchandising) Ltd v Cloke</td>
<td>1963</td>
<td>(1963) 2 QB 640, 417</td>
</tr>
<tr>
<td>John Alexander’s Clubs Pty Ltd v White City Tennis Club Ltd</td>
<td>2010</td>
<td>(2010) 241 CLR 1, 238</td>
</tr>
<tr>
<td>Johnson v Buttress</td>
<td>1956</td>
<td>(1956) 56 CLR 113, 372–3, 375</td>
</tr>
<tr>
<td>Johnson &amp; Johnson Pacific Pty Ltd v Unilever Australia (No 2)</td>
<td>2006</td>
<td>(2006) FCA 1646, 351</td>
</tr>
<tr>
<td>Johnson Tiles Pty Ltd v Esso Australia</td>
<td>1999</td>
<td>(1999) FCA 477, 350</td>
</tr>
<tr>
<td>Jones v Bartlett</td>
<td>2000</td>
<td>(2000) 205 CLR 166, 149</td>
</tr>
<tr>
<td>Jones v Padawatton</td>
<td>1969</td>
<td>(1969) 1 WLR 328, 78</td>
</tr>
<tr>
<td>Jorden v Money</td>
<td>1854</td>
<td>(1854) 10 ER 868, 121, 126</td>
</tr>
<tr>
<td>Joseph Constantine SS Line v Imperial Smelting Corporation Ltd</td>
<td>1942</td>
<td>(1942) AC 154, 279</td>
</tr>
<tr>
<td>Joseph Thorley Ltd v Orich Steamship Co Ltd</td>
<td>1907</td>
<td>(1907) 1 KB 660, 209</td>
</tr>
<tr>
<td>JR Consulting &amp; Drafting Pty Ltd v Cummins</td>
<td>2016</td>
<td>(2016) 329 ALR 625, 317</td>
</tr>
<tr>
<td>Just Group Ltd v Peck</td>
<td>2016</td>
<td>(2016) 344 ALR 162, 246, 426, 428</td>
</tr>
<tr>
<td>Karsales (Harrow) Ltd v Wallis</td>
<td>1856</td>
<td>(1856) 1 WLR 936, 210</td>
</tr>
<tr>
<td>Kaufman v McGillicuddy</td>
<td>1914</td>
<td>(1914) 19 CLR 1, 429</td>
</tr>
</tbody>
</table>

Table of cases xxvii
King Tide Co Pty Ltd v Arawak Holdings Pty Ltd [2017] QCA 251, 89
King's Norton Metal Edge Co Ltd v Edridge, Merritt & Co (1897) 14 TLR 98, 359
Kingston v Preston (1773) 98 ER 606, 231
Kiriri Cotton Co Ltd v Dewani [1960] AC 192, 421
Kobelt v Australian Securities and Investments Commission (2018) 352 ALR 689, 395
Konstas v Southern Cross Pumps & Irrigation Pty Ltd (1996) 217 ALR 310, 270
Kosciuszko Thredbo Pty Ltd v ThredboNet Marketing Pty Ltd (2014) 223 FCR 517, 424–5
Koufos v C Czarnikow Ltd (The Heron II) [1969] 1 AC 350, 471
Kowalczuk v Accom Finance Pty Ltd (2008) 77 NSWLR 205, 384
Kowalski v Mitsubishi Motors Australia Staff Superannuation Fund Pty Ltd [2018] SASCFC 44, 146
Krakowski v Eurolynx Properties Ltd (1995) 183 CLR 192, 421
Kranz v National Australia Bank Ltd [2003] 8 VR 310, 388
Krell v Henry [1903] 2 KB 740, 278–9
Kryen Pty Ltd v Wanda Projects Australia Pty Ltd [2012] SASCFC 23, 320
La Rosa v Nuodrill Pty Ltd [2013] WASCA 18, 156, 162
 Lam v Ausintel Investments Australia Pty Ltd (1989) 97 FLR 458, 65
Lampson (Australia) Pty Ltd v Fortescue Metals Group Ltd (No 3) [2014] WASC 162, 486, 489
Lamsheed v Lamsheed (1963) 109 CLR 440, 441
Land & Homes (WA) Ltd v Roe (1936) 39 WALR 27, 103
Langley v Foster (1906) 4 CLR 167, 204
Larios v Bonany v y Gurety (1873) LR 5 PC 346, 437
Larratt v Bankers and Traders Insurance Co Ltd (1941) 41 SR (NSW) 215, 320
Laelac Finance Pty Ltd v Knight [1969] 2 NSWLR 79, 86
Laurie v Carroll (1958) 98 CLR 310, 53
Laurinda Pty Ltd v Campalaba Park Shopping Centre Pty Ltd (1989) 166 CLR 623, 305
Lavery v Purcell (1888) 39 Ch D 508, 437
Laus v GWS Machinery Pty Ltd (2007) 209 FLR 53, 179
Leach Nominees Pty Ltd v Walter Wright Pty Co Ltd (1986) WAR 244, 87
Leading Edge Events Australia Pty Ltd v Te Kanawa [2007] NSWSC 228, 70–1
Leading Synthetics Pty Ltd v Adroit Insurance Group Pty Ltd [2011] VSC 467, 129
Leef v International Galleries [1950] 2 KB 86, 339
Leeson Pty Ltd v Princes Farm Pty Ltd [1983] 2 NSWLR 381, 340
Lederberger v Mediterranean Olives Financial Pty Ltd (2012) 38 VR 509, 134
Lee v Chai [2013] QSC 136, 385
Lefkowitz v Great Minneapolis Surplus Store, 86 NW 2d 689 (1957), 81
Legal Services Commissioner v Sheehy [2018] QCA 151, 135
Leibler v Air New Zealand Ltd [1999] 1 VR 1, 364
Leighton Contractors Pty Ltd v O’Carraigian [2016] QSC 233, 414
L’Estrange v Graucob [1943] 2 KB 394, 158–9
Leveraged Equities Ltd v Goodridge (2011) 191 FCR 71, 270
Lewis v Avery [1972] 1 QB 198, 360
Lexmead (Basingstoke) Ltd v Lewis [1982] AC 225, 469

Table of cases
LG Thorne & Co Pty Ltd v Thomas Borthwick & Sons (Australasia) Ltd (1956) 56 SR (NSW) 81
Lickbarrow v Mason (1787) 100 ER 35
Lieberman v Morris (1944) 69 CLR 69
Life Savers (Australasia) Ltd v Frigmobile Pty Ltd (1983) 1 NSWLR 431
Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd (1994) 1 AC 85
Lindner v Murdock’s Garage (1950) 82 CLR 628
Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221
Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd (2006) 156 FCR 1
Lion White Lead Ltd v Rogers (1918) 25 CLR 533
Lipkin Gorman v Karpnale Ltd [1991] 2 AC 548
Lipohar v The Queen (1999) 200 CLR 485
Lister v Romford Ice & Cold Storage Co Ltd [1957] AC 555
Litchfield v Chief Executive, Department of Manufacturing, Innovation, Trade, Resources and Energy (2014) 119 SASR 293
Liverpool City Council v Irwin [1977] AC 239
Lloyd's v Harper (1880) 16 Ch D 290
LMI Australasia Pty Ltd v Baulderstone Hornibrook Pty Ltd [2001] NSWSC 886
Loan Investment Corporation of Australia v Bonner [1970] NZLR 724
Lobb v Vasey Housing Auxiliary (War Widows Guild) [1963] VR 239
Lockyer Investment Co Pty Ltd v Smallacombe (1994) 50 FCR 338
Long v Piper (2001) NSWCA 342
Longtom Pty Ltd v Oberon Shire Council (1996) 7 BPR 14,799
Lord Elphinstone v Monkland Iron & Coal Co Ltd (1886) 11 App Cas 332
Lord Strathcona Steamship Co Ltd v Dominion Coal Co Ltd [1926] AC 108
Loutindler v Leis (1982) 149 CLR 509
Loub v Diprose (1992) 175 CLR 621
Love v Brien [2013] WASCA 280
Love v Bouvierie [1891] 3 Ch 82
Love v Peers (1768) 98 ER 160
Lovey v Bourdieu (1780) 99 ER 299
Lucas and Tall (Investments) Pty Ltd v Victoria Securities Ltd [1973] 2 NSWLR 268
Lucile v Cleary (2011) 111 SASR 134
Lucy v Commonwealth (1923) 33 CLR 229
Lumbers v W Cook Builders Pty Ltd (2008) 232 CLR 635
Lumley v Gye (1853) 118 ER 749
Lumley v Wagner (1852) 42 ER 687
Luna Park (NSW) Pty Ltd v Tramways Advertising Pty Ltd (1938) 61 CLR 286
Luu v Sovereign Developments Pty Ltd [2006] NSWCA 40
Lym International Pty Ltd v Marcolongo [2011] NSWCA 303
Mackay v Dick (1881) 6 App Cas 251
Mackender v Feldia AG [1967] 2 QB 590
Mackenzie v Rees (1941) 65 CLR 1
Mackintosh v Johnson (2013) 37 VR 301
Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service [2010] NSWCA 268, 240
MacRobertson Miller Airline Services v Commissioner of State Taxation (WA) (1975) 133 CLR 125

Table of cases xxix
<table>
<thead>
<tr>
<th>Case</th>
<th>Volume</th>
<th>(Year)</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Madden v Kevereski</td>
<td>1</td>
<td>1983</td>
<td>305, 478</td>
</tr>
<tr>
<td>Maddison v Alderson</td>
<td>8</td>
<td>1885</td>
<td>467, 106</td>
</tr>
<tr>
<td>Maggbury Pty Ltd v Hafele Australia Pty Ltd</td>
<td>210</td>
<td>2001</td>
<td>181, 197, 424-5</td>
</tr>
<tr>
<td>Magill v Magill</td>
<td>226</td>
<td>2006</td>
<td>551, 79, 89</td>
</tr>
<tr>
<td>Maber v Honeysett &amp; Maher Electrical Contractors Pty Ltd</td>
<td>2007</td>
<td>NSWSC 12, 373-4</td>
<td></td>
</tr>
<tr>
<td>Maine v Lyons</td>
<td>15</td>
<td>1913</td>
<td>671, 278</td>
</tr>
<tr>
<td>Mainteck Services Pty Ltd v Stein Heartey SA</td>
<td>89</td>
<td>2014</td>
<td>NSWLR 633, 198-9</td>
</tr>
<tr>
<td>Majik Markets Pty Ltd v S &amp; M Motor Repairs Pty Ltd</td>
<td>10</td>
<td>1987</td>
<td>NSWLR 49, 310</td>
</tr>
<tr>
<td>Mal Owen Consulting Pty Ltd v Ascroft</td>
<td>135</td>
<td>2018</td>
<td>NSWCA 135, 467</td>
</tr>
<tr>
<td>Malego Pty Ltd v AW Ellis Engineering Pty Ltd</td>
<td>227</td>
<td>2012</td>
<td>NSWCA 227, 115</td>
</tr>
<tr>
<td>Malik v Bank of Credit and Commerce International SA</td>
<td>20</td>
<td>1998</td>
<td>AC 20, 176</td>
</tr>
<tr>
<td>Malins v Freeman</td>
<td>48</td>
<td>1837</td>
<td>ER 537, 440</td>
</tr>
<tr>
<td>Manchester Diocesan Council v Commercial Investments</td>
<td>1</td>
<td>1970</td>
<td>WLR 241, 85</td>
</tr>
<tr>
<td>Mann v Paterson Constructions Pty Ltd</td>
<td>231</td>
<td>2018</td>
<td>VSCA 231, 326, 485</td>
</tr>
<tr>
<td>Mann v Mann</td>
<td>10</td>
<td>2008</td>
<td>AC 314, 14</td>
</tr>
<tr>
<td>Manufacturers’ Mutual Insurance Ltd v Queensland Government Railways</td>
<td>118</td>
<td>1968</td>
<td>CLR 314, 194</td>
</tr>
<tr>
<td>Manufacturers’ Mutual Insurance Ltd v Wibers</td>
<td>5</td>
<td>2008</td>
<td>ANZ Ins 60-853, 199</td>
</tr>
<tr>
<td>Maralinga Pty Ltd v Major Enterprises Pty Ltd</td>
<td>128</td>
<td>1973</td>
<td>CLR 356, 363</td>
</tr>
<tr>
<td>Maredelanto Compania Naviera SA v Bergbau-Handel GmbH (The Mihalis Angelos)</td>
<td>1971</td>
<td>1</td>
<td>QB 164, 296</td>
</tr>
<tr>
<td>Maritime National Fish v Ocean Trawlers</td>
<td>1</td>
<td>1935</td>
<td>AC 524, 280</td>
</tr>
<tr>
<td>Margush v Maddeford</td>
<td>121</td>
<td>2014</td>
<td>SASR 199, 92</td>
</tr>
<tr>
<td>Marks v GIO Australia Holdings Ltd</td>
<td>196</td>
<td>1998</td>
<td>CLR 494, 354, 357</td>
</tr>
<tr>
<td>Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd</td>
<td>3</td>
<td>2015</td>
<td>WLR 1843, 171, 173</td>
</tr>
<tr>
<td>Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd</td>
<td>237</td>
<td>2015</td>
<td>FCR 534, 243</td>
</tr>
<tr>
<td>Martech International Pty Ltd v Energy World Corporation Ltd</td>
<td>1004</td>
<td>2006</td>
<td>FCA 1004, 257</td>
</tr>
<tr>
<td>Martin v Tasmania Development and Resources</td>
<td>163</td>
<td>1999</td>
<td>ALR 79, 345</td>
</tr>
<tr>
<td>Master Education Services Pty Ltd v Ketchell</td>
<td>236</td>
<td>2008</td>
<td>CLR 101, 411</td>
</tr>
<tr>
<td>Masters v Cameron</td>
<td>91</td>
<td>1954</td>
<td>CLR 353, 77, 112-14</td>
</tr>
<tr>
<td>Masters Home Improvement Australia Pty Ltd v North East Solution Pty Ltd</td>
<td>2017</td>
<td>VSCA 88, 117, 244</td>
<td></td>
</tr>
<tr>
<td>Masterton Homes Pty Ltd v Palm Assets Pty Ltd</td>
<td>261</td>
<td>2009</td>
<td>ALR 382, 166</td>
</tr>
<tr>
<td>Materials Fabrication Pty Ltd v Boulderstone Pty Ltd</td>
<td>405</td>
<td>2009</td>
<td>VSC 405, 415</td>
</tr>
<tr>
<td>Maxcon Constructions Pty Ltd v Vadasz (No 2)</td>
<td>127</td>
<td>2017</td>
<td>SASR 193, 414, 418</td>
</tr>
<tr>
<td>Maxiberm Boilers Pty Ltd v Pacific Dunlop Ltd</td>
<td>4</td>
<td>1997</td>
<td>VR 559, 162</td>
</tr>
<tr>
<td>May v Lane</td>
<td>64</td>
<td>1894</td>
<td>LJI (QB) 256, 269</td>
</tr>
<tr>
<td>May &amp; Butcher Ltd v The King</td>
<td>2</td>
<td>1954</td>
<td>KB 17, 115</td>
</tr>
<tr>
<td>Maybury v Atlantic Union Oil Co Ltd</td>
<td>89</td>
<td>1953</td>
<td>CLR 507, 168</td>
</tr>
<tr>
<td>Mayne Nickless Ltd v Crawford</td>
<td>59</td>
<td>1992</td>
<td>SASR 490, 184</td>
</tr>
<tr>
<td>Mayne Nickless Ltd v Multigroup Distribution Services Pty Ltd</td>
<td>114</td>
<td>2001</td>
<td>FCR 108, 356</td>
</tr>
<tr>
<td>Mayne Nickless Ltd v Pegler</td>
<td>1</td>
<td>1974</td>
<td>NSWLR 228, 67</td>
</tr>
<tr>
<td>Mhuizi v Griffith University</td>
<td>10</td>
<td>2016</td>
<td>FCAFC 10, 78</td>
</tr>
<tr>
<td>McBride v Sandland</td>
<td>25</td>
<td>1918</td>
<td>CLR 69, 106, 435</td>
</tr>
<tr>
<td>McCann v Switzerland Insurance Australia Ltd</td>
<td>203</td>
<td>2000</td>
<td>CLR 579, 202, 204</td>
</tr>
<tr>
<td>McCarthy v McIntyre</td>
<td>78</td>
<td>1999</td>
<td>FCA 784, 356</td>
</tr>
<tr>
<td>McColls Wholesale Pty Ltd v State Bank of New South Wales</td>
<td>3</td>
<td>1984</td>
<td>NSWLR 365, 220</td>
</tr>
</tbody>
</table>

xxx Table of cases
Table of cases

McCourt v Cranston [2012] WASCA 60, 199
McCrohon v Harith [2010] NSWCA 67, 477
McDermott v Black (1940) 63 CLR 161, 257
McDonald v Denny's Leselles Ltd (1935) 48 CLR 457, 216, 322, 324, 446
McFarlane v Daniell (1938) 38 SR (NSW) 337, 418
McGavin v Gerraty (1911) 17 ALR 85, 478
McGrath v Australian Naturalcare Products Pty Ltd (2008) 165 FCR 230, 351
McHugh v Australian Jockey Club Ltd (2014) 314 ALR 20, 423
McIntosh v Dalewood (No 4) (1930) 30 SR (NSW) 415, 437
McKay v McKay [2008] NSWSC 177, 131
McKenna v Perecich [1973] WAR 56, 422
McKenry v White [2003] NSWSC 131, 111
McKenzie v McDonald [1927] VLR 134, 336
McMabon v Ambrose [1987] VR 817, 479
McMabon v Young (1876) 2 VLR (L) 57, 221
McRae v Commonwealth Disposals Commission (1951) 84 CLR 377, 360–1, 461, 466
McRoss Developments Pty Ltd v Caltex Petroleum Pty Ltd [2004] NSWSC 183, 281
Mediterranean Freight Services Ltd v BP Oil International Ltd (The Fiona) [1994] 2 Lloyd’s Rep 506, 223
Medtel Pty Ltd v Courtney (2003) 130 FCR 182, 181
Meehan v Jones (1982) 149 CLR 571, 91, 101, 204
Mehmet v Benson (1965) 113 CLR 295, 439
Melbourne Linh Son Buddhist Society Inc v Gippsreal Ltd [2017] VSCA 161, 453
Melbourne Stadiums Ltd v Sautner (2015) 229 FCR 221, 309
Merck Sharp & Dohme (Australia) v Peterson (2011) 196 FCR 145, 182
Meridian Retail Pty Ltd v Australian Unity Retail Network Pty Ltd [2006] VSC 223, 243
Meriton Apartments Pty Ltd v McLaurin and Tait (Developments) Pty Ltd (1976) 133 CLR 671, 280
Merritt v Merritt [1970] 1 WLR 1211, 79
Mersey Steel and Iron Co Ltd v Naylor Benson (1884) 9 App Cas 434, 233
Messer v Lotus Securities Ltd [2018] FCA 1147, 68, 396
Meticon Homes Pty Ltd v Sofley (2016) 49 VR 746, 465
Metropolitan Gas Co v Federated Gas Employees’ Industrial Union (1925) 35 CLR 449, 202–3
Metroplex Pty Ltd v Freight Investments Pty Ltd [1969] VR 9, 210
MG Corrosion Consultants Pty Ltd v Gilmour [2012] FCA 416, 482
Miba Pty Ltd v Nescor Industries Group Pty Ltd (1996) 141 ALR 525, 350
Micaron v Perpetual Trustees Australia Ltd (1999) 75 SASR 1, 386
Michael Realty Pty Ltd v Carr [1977] 1 NSWLR 557, 304
Mickowski v Financial Ombudsman Service Ltd (2012) 36 VR 456, 45
Midya v Sagrani [1999] NSWCA 187, 100
Millar v Federal Commissioner of Taxation (2016) 245 FCR 302, 169
Miller v Miller (2011) 242 CLR 446, 409, 418, 421–2
Mills v Ruthol Pty Ltd (2004) 61 NSWLR 1, 478–9