

CONTRACT LAW

PRINCIPLES AND CONTEXT

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.

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Cambridge University Press
978-1-107-68748-6 — Contract Law
Andrew Stewart , Warren Swain , Karen Fairweather
Frontmatter
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CAMBRIDGE
UNIVERSITY PRESS

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CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781107687486

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First published 2019

Cover designed by Anne-Marie Reeves
Typeset by SPi Global
Printed in China by C & C Offset Printing Co. Ltd, April 2019

A catalogue record for this publication is available from the British Library

A catalogue record for this book is available from the National Library of Australia

ISBN 978-1-107-68748-6 Paperback

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978-1-107-68748-6 — Contract Law
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PREFACE

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

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- 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
- Harvela 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
- Havyn Pty Ltd v Webster* [2005] NSWCA 182, 345, 351
- Hawcroft v Hawcroft General Trading Co Pty Ltd* [2016] NSWSC 555, 361
- Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd* (1991) 22 NSWLR 298, 128, 366–7
- Hawkins v Clayton* (1988) 164 CLR 539, 171–2
- Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, 342
- Heimann v Commonwealth* (1938) 38 SR (NSW) 691, 174
- Heldberg v Rand Transport (1986) Pty Ltd* (2018) 280 IR 93, 231
- 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
- Henthorn 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
- Herne 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
- Hillam 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

- Hirachand Punamchand v Temple* [1911] 2 KB 330, 258
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Hirstenstein v Hill Dickinson LLP [2014] EWHC (Comm) 2711, 463
Hobbs v London and South Western Railway Co (1875) LR 10 QB 111, 467
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Hoenig v Isaacs [1952] 2 All ER 176, 234–5
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Homburg Houtimport BV v Agrosin Private Ltd (The Starsin) [2004] 1 AC 715, 145
Homestake Australia Ltd v Metana 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
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Hope v Walter [1900] 1 Ch 257, 440
Hope Island Resort Holdings Pty Ltd v Jefferson Properties (Qld) Pty Ltd [2005] QCA 315, 204
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Howard E Perry & Co Ltd v British Railways Board [1980] 1 WLR 1375, 436
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Howie v New South Wales Lawn Tennis Ground Ltd (1956) 95 CLR 132, 151
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IAC (Leasing) Ltd v Humphrey (1972) 126 CLR 131, 448
IceTV Pty Ltd v Ross [2007] NSWSC 635, 429
Idi Enterprises Pty Ltd v Classified Transport Pty Ltd (2011) 111 SASR 155, 352
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Informax International Pty Ltd v Clarius Group Ltd (2012) 207 FCR 298, 426
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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

- Insight Vacations Pty Ltd v Young* (2011) 243 CLR 149, 55
Integrated Computer Services Pty Ltd v Digital Equipment Corporation (Australia) Pty Ltd (1988) 5 BPR 97,326, 88–9
Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd [1989] QB 433, 161
Interstar Wholesale Finance Pty Ltd v Integral Home Loans Pty Ltd (2008) 257 ALR 292, 448
Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896, 196–7, 200
IOOF Australia Trustees (NSW) Ltd v Tantipech (1998) 156 ALR 470, 357
IOOF Building Society Pty Ltd v Foxeden Pty Ltd [2009] VSCA 138, 308
Ipsstar Australia Pty Ltd v APS Satellite Pty Ltd (2018) 329 FLR 149, 393, 396
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Ivanof v Phillip M Levy Pty Ltd [1971] VR 167, 338
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J Fenwick & Co Pty Ltd v Federal Steam Navigation Co Ltd (1943) 44 SR (NSW) 1, 203
J Lauritzen AS v Wijsmuller (The Super Servant Two) [1990] 1 Lloyd's Rep 1, 280
J Spurling Ltd v Bradshaw [1956] 1 WLR 461, 161
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Je Maintiendrai Pty Ltd v Quaglia (1980) 26 SASR 101, 128, 130, 262–3
Jenyns v Public Curator (Qld) (1953) 90 CLR 113, 374
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JJ Savage & Sons Pty Ltd v Blakney (1970) 119 CLR 435, 164
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John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd (2010) 241 CLR 1, 238
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Joseph Constantine SS Line v Imperial Smelting Corporation Ltd [1942] AC 154, 279
Joseph Thorley Ltd v Orchis Steamship Co Ltd [1907] 1 KB 660, 209
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- King Tide Co Pty Ltd v Arawak Holdings Pty Ltd* [2017] QCA 251, 89
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Koompahtoo Local Aboriginal Land Council v Sanpine Pty Ltd (2007) 233 CLR 115, 22, 296–300
Kosciuszko Thredbo Pty Ltd v ThredboNet Marketing Pty Ltd (2014) 223 FCR 517, 424–5
Koufos v C Zarnnikow Ltd (The Heron II) [1969] 1 AC 350, 471
Kowalczyk v Accom Finance Pty Ltd (2008) 77 NSWLR 205, 384
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Krakowski v Eurolynx Properties Ltd (1995) 183 CLR 563, 341
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Kyren Pty Ltd v Wunda Projects Australia Pty Ltd [2012] SASCFC 23, 320
L Schuler AG v Wickman Machine Tool Sales Ltd [1974] AC 235, 296
La Rosa v Nudrill Pty Ltd [2013] WASCA 18, 156, 162
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Lampson (Australia) Pty Ltd v Fortescue Metals Group Ltd (No 3) [2014] WASC 162, 486, 489
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Latec Finance Pty Ltd v Knight [1969] 2 NSWLR 79, 86
Laurie v Carroll (1958) 98 CLR 310, 53
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- LG Thorne & Co Pty Ltd v Thomas Borthwick & Sons (Australasia) Ltd* (1956) 56 SR (NSW) 81, 165
- Lickbarrow v Mason* (1787) 100 ER 35, 12
- Lieberman v Morris* (1944) 69 CLR 69, 416
- Life Savers (Australasia) Ltd v Frigmobile Pty Ltd* [1983] 1 NSWLR 431, 145
- Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd* [1994] 1 AC 85, 142, 269
- Lindner v Murdock's Garage* (1950) 83 CLR 628, 423–4, 426–8
- Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 441
- Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd* (2006) 156 FCR 1, 198
- Lion White Lead Ltd v Rogers* (1918) 25 CLR 533, 135
- Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548, 488
- Lipobar v The Queen* (1999) 200 CLR 485, 18
- Lister v Romford Ice & Cold Storage Co Ltd* [1957] AC 555, 175
- Litchfield v Chief Executive, Department of Manufacturing, Innovation, Trade, Resources and Energy* (2014) 119 SASR 293, 265
- Liverpool City Council v Irwin* [1977] AC 239, 174, 176
- Lloyd's v Harper* (1880) 16 Ch D 290, 146
- LMI Australasia Pty Ltd v Baulderstone Hornibrook Pty Ltd* [2001] NSWSC 886, 114–15
- Loan Investment Corporation of Australia v Bonner* [1970] NZLR 724, 437
- Lobb v Vasey Housing Auxiliary (War Widows Guild)* [1963] VR 239, 282, 287
- Lockyer Investment Co Pty Ltd v Smallacombe* (1994) 50 FCR 338, 357
- Long v Piper* [2001] NSWCA 342, 112
- Longtom Pty Ltd v Oberon Shire Council* (1996) 7 BPR 14,799, 440
- Lord Elphinstone v Monkland Iron & Coal Co Ltd* (1886) 11 App Cas 332, 452
- Lord Strathcona Steamship Co Ltd v Dominion Coal Co Ltd* [1926] AC 108, 151
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- Louth v Diprose* (1992) 175 CLR 621, 374, 376, 383–5, 388
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- Lucas and Tait (Investments) Pty Ltd v Victoria Securities Ltd* [1973] 2 NSWLR 268, 323
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- Lumley v Gye* (1853) 118 ER 749, 23
- Lumley v Wagner* (1852) 42 ER 687, 443–4
- Luna Park (NSW) Pty Ltd v Tramways Advertising Pty Ltd* (1938) 61 CLR 286, 234, 297
- Luu v Sovereign Developments Pty Ltd* [2006] NSWCA 40, 322–3
- Lym International Pty Ltd v Marcolongo* [2011] NSWCA 303, 201
- Mackay v Dick* (1881) 6 App Cas 251, 236
- Mackender v Feldia AG* [1967] 2 QB 590, 414
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- Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service* [2010] NSWCA 268, 240, 244
- MacRobertson Miller Airline Services v Commissioner of State Taxation (WA)* (1975) 133 CLR 125, 89, 99

- Madden v Keverski* [1983] 1 NSWLR 305, 478
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- McCourt v Cranston* [2012] WASCA 60, 199
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