

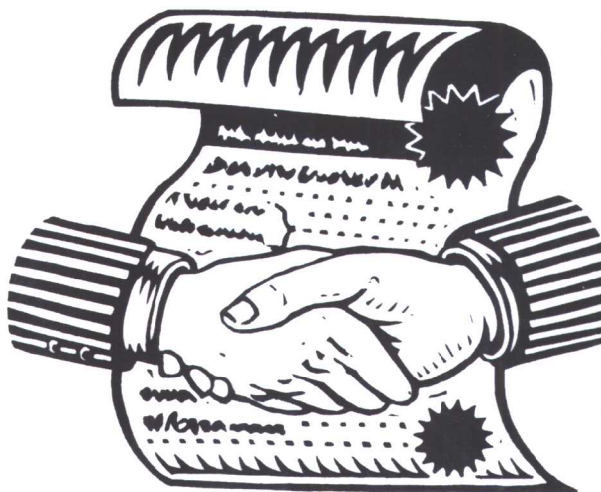
Palgrave MacMillan Law Masters

麦克米伦法学精要丛书·影印本



【英】埃万·麦肯德里克

Ewan McKendrick



契约法

CONTRACT LAW

第四版

4th edition



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图书在版编目(CIP)数据

契约法/(英)麦肯雅克(McKendrick, E.)著. —北京:法律出版社, 2002. 12

(麦克米伦法学精要丛书)

ISBN 7-5036-4049-9

I. 契… II. 麦… III. 契约法—英国—教材—英文
IV. D956.13

中国版本图书馆 CIP 数据核字(2002)第 095301 号

Contract Law

Ewan McKendrick

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图字:01—2002—2540

出版/法律出版社

总发行/中国法律图书公司

印刷/北京民族印刷厂

编辑/法律教育出版中心

经销/新华书店

责任印制/陶松

开本/A5

版本/2003年1月第1版

印张/15.75

印次/2003年1月第1次印刷

法律出版社/北京市莲花池西里法律出版社综合业务楼

电子邮件/info@lawpress.com.cn

网址/www.lawpress.com.cn

电话/010-63939621

传真/010-63939622

法律教育出版中心/北京市莲花池西里法律出版社综合业务楼

电子邮件/jiaoyu@lawpress.com.cn

中国法律图书公司/北京市莲花池西里法律出版社综合业务楼

传真/010-63939777

网址/www.Chinalaw-book.com

销售热线/010-63939776

010-63939778

书号:ISBN 7-5036-4049-9/D·3767 定价:28.00 元

出版说明

1843年,来自苏格兰的麦克米伦兄弟在英国创立了麦克米伦出版社,筚路蓝缕,以启山林。一百多年来,这家出版社早已发展成为国际知名的跨国出版集团,以出版学术著作和高等教育教材而享有盛誉,其包括法学在内的人文社会科学出版物更是广有嘉声。

麦克米伦法学精要丛书是麦克米伦近年来重点推出的一套法学教材。风格明晰简约,内容深浅适中。丛书以方便学生学习为目标,阐发原理,评介法律;析解制度,品读案例;引导思考,提供练习。既适用于专业课程的学习,也有助于职业技能的改进,受到学生与教师的广泛欢迎。对我们非英语国家的学生和研究者来说,这样一套教材恰好是学习、了解英语国家法学和提高法律英语水平的极好读物。

法律出版社作为中国最大的法律图书出版机构,一直致力于法律图书的全品种出版。2002年,成立专门的法律教育出版中心,将服务于中国法律教育事业的发展引为重责。在从事法律教育出版的过程中,我们一直认为,中国学子不仅应该阅读中文法学教材,通过母语了解本土或域外法学知识,同时也应该眼界高远,进一步阅读外文学教材与文献,在原汁原味中学取域外知识,提升专业水平,适应日益全球化的现实需要。1999年,本社曾经出版英文影印本的美国法精要系列丛书,受到佳评。如今,我们再次引进这套麦克米伦法学精要丛书,影印出版,期冀于在中文教材之外,为广大学子和研究人员进一步提供优秀英文教材读物,谨献绵薄之力,给进步中的中国法治事业和进步中的中国年轻一代。

本书为《契约法》。本书的主旨在于清楚而简明地阐释英国契约法的基本规则。同时,也展示了有关契约法的性质、适用范围、功用以及更为广泛的围绕契约法基本原则的争论,比如对价问题。

在这些问题的讨论过程中,作者对一些更深入、更周密的相关著述尽力去牵线搭桥,这为读者就有关问题进行深入研究提供了方便。

在阅读本书主体内容之前,有三个问题需要澄清:

一、本书主题涉及的范围,也即本书所指的契约法的范围。鉴于雇佣契约、婚姻契约、租用买卖契约、消费者信用契约、货物销售契约、土地出售契约以及抵押与租赁协议都分别有专门的法律调整,所以,它们一般都不在本书的讨论范围之中。

二、契约法与侵权法、恢复原状法的区别。契约法植根于“基于有约束力的承诺的预期必须被兑现”原则;“遭受过错性的伤害必须得到赔偿”原则反映在侵权法之中;“不公平的改善必须被推翻”原则施行于恢复原状法之中。

三、契约法在社会生活中的具体适用。在现实生活中,契约法并非无孔不入,它一般在如下情形下发挥作用:为保证契约的合法有效,在契约的形成阶段提供规则标准;如有违约情形出现,它为当事人获取法律救济提供规范上的支持。

本书的具体内容基本作了如下安排:第一部分和第二部分主要是静态地考察契约的形式、适用范围与契约的内容;第三部分阐述了契约有效性的监督问题;第四部分主要是动态地讲述了契约的履行、债务清偿与违约救济问题。

还需要说明的是,本书对两部新法案引发的相关问题进行了评论。一个是1998年人权法案(the Human Rights Act 1998)——它对私法的影响将在不远的将来得到验证,本书就相关问题作了分析。另一个是1999年契约法案(the Contracts Act 1999)。契约第三人的权益问题长久以来一直是英国契约法颇存争议的问题,该法案对此作出根本性的修改。本书对法案颁行前后的差异作了详尽的论述。

另外,该书在主体内容之前对涉及到的判例与法规作了详尽列举,以供读者参考。每章具体内容的组织也比较详尽与周全:首先第一小节基本上也是该章的导论;然后详尽地介绍主干内容,接着是对本章内容的总结;随后是相关练习,最后列举了所引用的书目、关键术语的索引,可满足读者不同的阅读需求。

法律出版社法律教育出版中心

2002年12月

Preface to the Fourth Edition

My aim in writing the fourth edition of this book has not changed from the stated aim of previous editions: namely, to provide a clear and straightforward account of the basic rules of English contract law. I have also sought to introduce the reader to some of the debates about the nature, the scope and the functions of the law of contract and to discuss some of the wider controversies which surround certain basic doctrines of English contract law, such as consideration. In discussing these issues I have attempted to build a bridge between this introductory work and some of the more advanced and detailed writings on the law of contract by making frequent reference throughout the book to both the periodical literature and the standard textbooks on the law of contract (full citations are contained in the Bibliography located at the end of the book). My hope is that these references will encourage the reader to pursue the issues raised in this book in greater detail in the writings to which I have made reference.

The most significant change in the law which has taken place since the publication of the third edition of this book is the enactment of the Contracts (Rights of Third Parties) Act 1999. The Act reforms the doctrine of privity and has done so by a rather technical piece of legislation which is analysed in Chapter 7 (the chapter has, as a result, been substantially rewritten). In this connection I am grateful to LLP for permission to draw on material which first appeared in *Building Law Monthly*. The text has been fully revised and updated to take account of numerous new developments in areas of the law such as estoppel, the construction of contracts, exclusion clauses, unfair terms in consumer contracts and damages, to name but a few. As far as the future is concerned, the most significant event may turn out to be the enactment of the Human Rights Act 1998. The impact of that Act on private law is likely to be tested in the not-too-distant future and its implications may be far-reaching. For now, all that has been done is to draw attention to the existence of the Act in the opening chapter. Future editions may well have to wrestle with the Act and its implications in more detail.

Finally, I must acknowledge the debts which I have incurred in writing this edition. I would like to thank Helen Bugler at Macmillan Press for her support and encouragement. I must also acknowledge the assistance which I have derived from colleagues and students who have helped to clarify my thoughts and offered a number of constructive criticisms and suggestions. But my greatest debt continues to be to my wife, Rose, and our children, Jenny, Sarah, Rachel and Katie. I am grateful to them for their encouragement and support.

The book is dedicated to the memory of my grandparents.

I have endeavoured to state the law on the basis of the materials available to me at the end of March 2000.

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