

CARTER'S BREACH OF CONTRACT

HART EDITION

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Carter's Breach of Contract

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Preface

I am delighted to have the opportunity to publish this edition of *Carter's Breach of Contract* with Hart Publishing.

This book has its origin in my PhD thesis at the University of Cambridge. When that was converted into a book it was published as *Breach of Contract* by Law Book Co Ltd, Sydney, in 1984. The second edition of that work appeared in 1991 under imprints of the Law Book Co Ltd and Sweet & Maxwell, London. Although the basic structure of the work has remained the same, a great deal has happened in the 20 years since the second edition of *Breach of Contract*. That includes changes in my understanding of the subject. I owe a great debt of gratitude to both the Law Book Co Ltd and Sweet & Maxwell for their efforts in promoting the work *Breach of Contract*.

Breach of contract is one of the most important areas of contract law. It is also an area of the law which remains relatively untouched by statute. Because the common law as applied in Australia does not materially differ from the common law as applied in England, it is both appropriate and useful to frame the analysis in the book without distinguishing between English and Australian authorities. Whereas the English law of breach of contract has chiefly been stated in the context of standard form sale of goods and charterparty contracts, in Australian law negotiated contracts have been more prominent. In addition, decisions of the High Court of Australia on contracts for the sale of land have had a considerable influence on English law. It is hardly surprising that the decisions in each jurisdiction pay great respect to those in the other. From the perspective of exposition of the law, the ability to call in aid a variety of illustrations is invaluable. There are, indeed, very few instances where there is any difference of substance between English and Australian law, and therefore very few occasions on which it is necessary to devote space to differences of opinion.

I have also drawn on decisions in other jurisdictions in particular areas. Although these relate mainly to the United States, developments in New Zealand and Singapore are of interest. So also are the provisions of the American Law Institute's *Restatement of the Law Second, Contracts 2d* and statutes in other jurisdictions, such as the *Uniform Commercial Code* (US) and the *Contractual Remedies Act 1979* (NZ). I have always taken the view that, so far as commercial contracts are concerned, although expressions of solutions to problems of breach of contract may vary, there is a great deal of uniformity in the common law the world over. That is the perspective of the *United Nations Convention on Contracts for the International Sale of Goods 1980* and the *UNIDROIT Principles of International Commercial Contracts 2004*. While space does not always permit detailed analysis of all these

sources, they all play a role in this work. (I have continued to use the 1990 Official Text for the *Uniform Commercial Code* (US).)

Because the book started life as a doctoral dissertation, it does have a thesis. Having reread nearly all the cases which formed the foundation for my PhD, as well as the subsequent cases, I have not departed substantially from the scheme which I devised 30 years ago. I continue to benefit from the supervision provided, all those years ago, by Len Sealy and Brian Coote. I have kept in touch with both, and with one of my examiners (Francis Reynolds) and I remain indebted to all three. Although, for the purposes of a practitioner and student book that thesis is principally in evidence in the structure of the book, and the content of the articles which each chapter includes, there is also an underlying thesis which awaits discovery by anyone who, perhaps because they are stranded on a desert island, has the tenacity to read the book from cover to cover.

Of course, preparation of any book requires a considerable amount of help and encouragement from others. That includes discussions over the years with colleagues, students, practitioners and academics far too numerous to mention here. Of course, they include my colleagues at the University of Sydney and Freehills. Two of my former research students — Eliza Mik and Wayne Courtney — very kindly provided invaluable comments on the proofs. My assistant at Freehills, Caterina Zagari, kept track of all the proofs for me and answered my many calls for assistance in locating case reports and articles. Rosemary Peers, as always, edited the manuscript with exceptional care and skill notwithstanding quite unreasonable deadlines. I am also grateful to Rosemary Langley for picking up many errors when proofreading the work.

Most importantly, I have to thank my wife Helen. She has played a constant role in my research — and therefore this book — since the day we arrived in Cambridge in 1978. I would have achieved very little without her support and encouragement.

I have attempted to state the law on the basis of material available to me on 31 December 2010. However, it has been possible to incorporate a few later cases.

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Sydney Law School
12 January 2012

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