

Contract Law

Neil Andrews



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Contract Law

This textbook takes a fresh approach to contract law; as a first edition it reflects the subject in the 21st century more accurately than other texts. Comprehensive and scholarly, it maps the curriculum perfectly but detailed references and further reading sections encourage students to explore the subject further. Understanding is paramount and chapter introductions clearly guide students through the material. The textbook takes an innovative approach to case law: breaking down and discussing individual elements of a case and selecting short key extracts, it gives students the tools to read cases independently and with confidence. An examination of the historical and theoretical foundations of the subject and a concluding chapter tracking emerging fields ensure the broadest possible perspective. Discussion of key recent cases such as *Durham Tees Valley Airport* (2010) and *Chartbrook* (2009) make this important new text a must for contract law students.

Neil Andrews is an experienced contract law teacher and scholar. A Fellow of Clare College Cambridge, he has published widely: his publications include *English Civil Procedure* (2003) and *The Modern Civil Process* (2008).

For

Liz, Samuel, Hannah and Ruby

and

In memory of

Kurt Lipstein

1909–2006

Professor of Comparative Law, University of Cambridge

Fellow of Clare College

Bencher of Middle Temple

Stephen Goldstein

Died 2009

Professor, University of Pennsylvania, 1966–76

Edward S. Silver Professor of Procedural Law,

Hebrew University of Jerusalem, 1976–2009

Sometime visiting Fellow, Trinity College, Cambridge

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Died 2009

Professor of Law, Otago University, New Zealand

Sometime visiting Fellow, Churchill College, Cambridge

Three times chess champion, New Zealand

Preface

I hope that this guide to the English law of contract will be of use and interest to both students and lawyers in practice.

I have provided the reader with introductory summaries to each topic. Chapter 14 reflects the very considerable importance of interpretation of written contracts, which practitioners are not slow to name as the most important aspect of contract law. In addition, I decided to include chapters on illegality and assignment, and a concluding chapter on three topical matters: 'good faith', European 'soft law' codes, and the (perennial, but perhaps pressing) question of case law technique versus codification. This is an 'adult book': 'minors', since small, are confined to paragraph 1.09.

By the use of varying fonts, the reader can locate quickly discussion of greater detail, including substantial portions of quoted text, and take appropriate action, perhaps sometimes evasive. Paragraph numbering has facilitated cross-referencing, which is particularly important in this cohesive subject where doctrines are closely connected or overlap. In each chapter there is a short list of further selected reading. At the end of the book there is a copious general bibliography. There is also in the appendix to this book a set of 'cameo' biographies of the leading writers and judges (dead or retired) who have shaped this subject.

I have been lucky to have taught this subject in Cambridge since 1983. I am grateful to many generations of law students, from whom I have learned a great deal. Contract law students in the early 1980s were wrestling with judgments of the recently retired Lord Denning and of Lord Diplock, who gave his last judgment in 1985. Current students are similarly engaged with the bold judgments of the recently retired Lord Hoffmann, notably, *Attorney-General for Belize v. Belize Telecom Ltd* (2009, PC), discussed at 13.15; *Chartbrook Ltd v. Persimmon Homes Ltd* (2009, HL), on which see 14.14, 14.22, 14.35, 14.46; and *Transfield Shipping Inc. v. Mercator ('The Achilles')* (2008, HL), on which see 18.43, 18.45 ff. During the long interval we have witnessed the brilliant lucidity of Lords Bingham, Browne-Wilkinson, Goff, Hobhouse, Millett, Mustill, Nicholls and Steyn (to confine the list to retired members of the House of Lords), and the proliferation of new textbooks and other works on contract law. During these last three decades there has also been an avalanche of scholarship in restitution or unjust enrichment, and judicial absorption of this learning.

I pay filial tribute to those who taught me various parts of the English law of obligations at Brasenose College, Oxford, 1977–80 (BA) and 1981–2 (BCL): Hugh Collins

(now Professor at the London School of Economics, and my college tutor in contract law at Oxford), John Davies (a Herculean teacher), Professor Bernard Rudden (sometime Professor of Comparative Law), the late Professor Peter Birks (Regius Professor of Civil Law, Oxford) and Professor Barry Nicholas (sometime Professor of Comparative Law, later Principal of Brasenose College).

I have also learned a great deal from my teaching colleagues in the University of Cambridge who have taught contract law or cognate subjects, and I pay respectful homage to their example. In recent years I have also benefited from discussion on 'vitiating factors' with Gareth Spark, PhD, my former research pupil (now University of East Anglia). Lord Grabiner of Aldwych, QC (Head of Chambers, One Essex Court; formerly Chairman of the Court of Governors, London School of Economics, 1998–2007) has also generously encouraged me. None of those mentioned in this preface has been asked to comment on this text, for which I am, therefore, wholly responsible and culpable.

My thanks are due to the members of Cambridge University Press who have assisted in this publication, and especially to Sinéad Moloney who kindly invited me to publish with this distinguished press.

I am grateful to my wife, Elizabeth Deyong, and our children, Samuel, Hannah and Ruby. Their good humour has enabled me to keep the law fully at arm's length outside normal business hours. I have been remarkably blessed.

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