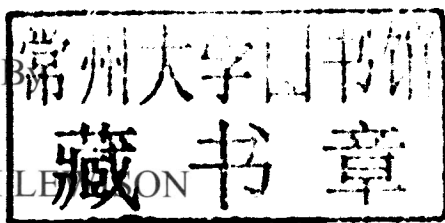


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PREFACE

Whence does it come to pass that our common language, so easy for all other uses, becomes obscure and unintelligible in wills and contracts? and that he who so clearly expresses himself in whatever else he speaks or writes, cannot find in these any way of declaring himself that does not fall into doubt and contradiction?

Michel de Montaigne
On Experience

The interval since the last edition of this book has seen Lord Hoffmann's final two judicial contributions to contractual interpretation. In *Chartbrook Homes Ltd v Persimmon Homes Ltd*¹ the House of Lords finally settled the long-running debate about the admissibility of pre-contractual negotiations in the interpretation of contracts. Subject to certain exceptions, the House reaffirmed the traditional exclusionary rule. In consequence I have rewritten (and shortened) the paragraph dealing with this topic.² Perhaps more controversially the House also restated the circumstances in which the court will rectify a contract in terms that were narrower than some had previously understood. The principles of rectification are, however, outside the scope of this book. The second of Lord Hoffmann's major judgments was that in *Attorney General of Belize v Belize Telecom Ltd*³ where he restated the law governing the implication of terms. Although this was a decision of the Privy Council, and hence not technically binding on English courts, Lord Hoffmann's restatement is destined to become the authoritative starting point when questions of implication arise. One of the important points that he made is that the implication of terms is an integral part of the interpretation of contracts: a view which previous editions of this book have always advocated. The major change, however, was to assimilate all the various tests that have been advanced over the years for the implication of terms. This has necessitated substantial rewriting of Chapter 6.

The same interval has also seen the preparation and publication of a version of the first nine chapters of this book, adapted for the Australian market.⁴ I was fortunate to have collaborated with David Hughes, of the New South Wales Bar, who did all the hard work involved. He introduced me to the vast array of Australian learning on the subject; and picked up a number of English cases which I ought to have found for myself.

¹ [2009] 1 A.C. 1101.

² Para.3.08.

³ [2009] 2 All E.R. 1127.

⁴ *The Interpretation of Contracts in Australia*.

Two major innovations in this edition are chapters on Force Majeure Clauses (Chapter 13) and Dispute Resolution Clauses (Chapter 18). In consequence the numbering of chapters between old Chapters 13 and 17 has been changed. I have introduced paragraphs on published precedents⁵; the maxim *noscitur a sociis*⁶; blank spaces⁷ and an expanded paragraph about deeming clauses.⁸ I have also taken the opportunity to rewrite the paragraphs on incorporation of terms; and to split up other paragraphs that were becoming too unwieldy. I have also rearranged parts of the text in order to improve its readability. The flow of cases about the interpretation of contracts has continued unabated; and I have tried to incorporate all those that shed light on the problems of contractual interpretation.

It is a forlorn hope to suppose that contracts will ever be free of “doubt and contradiction” but the purpose of this book will be served if it provides practising lawyers with a source book of arguments to advance their clients’ cause. I have made use of materials available to me as at the end of July 2011.

May I end, as in previous editions, with the wise words of Megarry J. in *Cordell v Second Clanfield Properties Ltd*⁹:

“It seems to me that words in a book written or subscribed to by an author who is or becomes a judge have the same value as words written by any other reputable author, neither more nor less.”

Kim Lewison
Royal Courts of Justice
September 2011

⁵ Para.3.06.

⁶ Para.7.14.

⁷ Para.8.16 (suggested by David Hughes).

⁸ Para.14.12.

⁹ [1969] 2 Ch. 9.

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