

The Modern Law of Contract

Eighth Edition

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Richard
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THE MODERN LAW OF CONTRACT

Eighth Edition

Richard Stone

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Preface

The aim of this book is to provide a comprehensive but readable account of what I have termed 'the modern law of contract'. By this I mean the law of contract as applied by the English courts in the early 21st century. This I see as being still rooted in the forms of the classical theory of contract (which is generally accepted as dating from the late 19th century), but with those forms increasingly being stretched to adapt to the modern world. The inadequacies of the classical model which are thus exposed have been the subject of much commentary and analysis, together with suggestions of better models which might be adopted. Understanding the modern law requires an awareness of these critical analyses and this I have attempted to provide throughout the text. What results is not, however, and is not intended to be, a radical re-reading of this area of law. A quick look at the chapter headings will show an overall structure that will be familiar to all contract lecturers. For the purposes of exposition, many familiar authorities have been used. Throughout, however, and in particular through the footnotes, I have tried to indicate ways in which the classical model of contract may be or is being challenged and developed, whether openly or surreptitiously. I hope that the result is a treatment of the law which is easy to follow (to the extent possible given the complexity of some areas) but which is also sufficiently rich to provide a challenge to more discerning readers. At the very least I hope that such readers will be encouraged to think about and explore new lines of thought on a variety of topics.

The previous editions have been well received by students and lecturers, but some changes have been made to this edition as a result of feedback. Diagrammatic summaries have been added at various points in every chapter to provide assistance to students who find visual representations easier to digest than plain text. 'Key cases' have been highlighted. These are intended to be the cases which 'all students of contract law should know' on each topic. This is inevitably to some extent a personal selection, and no doubt other teachers will object that their favourite examples have been excluded. Each chapter now ends with a short bullet-pointed summary. Some additional 'for thought' questions have been included, since these were found to be a useful addition to the previous edition. No answers are provided to these. They are intended to stimulate students into thinking about issues for themselves, and developing a critical approach to the

law – not simply accepting what judges and commentators say as the only possible answer to any particular question. As a response to the view that agency is not covered in undergraduate contract syllabuses, this chapter has been removed.

New case law covered in this edition includes two House of Lords' decisions on damages: *Golden Strait Corporation v Nippon Yusen Kubishika Kaisha* (time for assessment) and *Transfield Shipping Inc v Mercator Shipping Inc, The Achilleas* (remoteness). From the Court of Appeal there is *Wilson v Burnett* (intention to create legal relations), *Prudential Assurance Co Ltd v Ayres* (interpretation), *Regus (UK) Ltd v Epcot Solutions Ltd* (exclusion clauses), *Halpern v Halpern* (duress), *Beckett Investment Management Group Ltd v Hall* (restraint of trade), and *WWF-World Wide Fund for Nature v World Wrestling Federation Inc* (restitutionary damages).

Readers should note that as regards the use of the terms 'claimant' and 'plaintiff', I have continued the practice of previous editions, which is to use the label which will be found in the report of any particular case (which will depend on when the action was brought). Where the word is used generically, rather than in relation to a particular case, 'claimant' is used.

Finally, my thanks to my publishers, Routledge-Cavendish, and in particular Fiona Kinnear and Lloyd Langman, for their patience and assistance in seeing this edition through to publication, and to my wife, Maggie, for her support during the writing process.

The law is stated, as far as possible, as it stood on 31 March 2009.

Richard Stone
Elston, Newark
April 2009

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Chapter 6

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