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PERFORMANCE, BREACH,  
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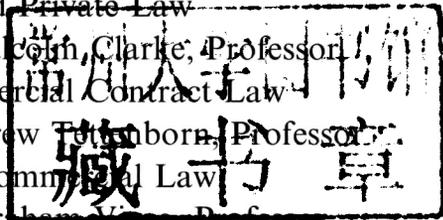
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**CONTRACTUAL DUTIES**

## FOREWORD

I have been engaged in the practice of the law for very many years. For much of that time I have grappled with maritime and other commercial contracts. Chitty and Treitel have been constant bedfellows. It has however always seemed to me that there was a gap in the market for a work like this. The title is something of a mouthful: 'Contractual Duties: Performance, Breach, Termination and Remedies', but demonstrates the great breadth of the work.

It covers topics which I have found particularly bewildering over the years. They include rescission, anticipatory breach, frustration and damages. I cannot pretend that I have assimilated the contents of this immense tome in order to satisfy myself that it contains no errors or omissions. I have perhaps concentrated too much on seeing the extent to which the authors have been rude about my decisions. I have however read enough to appreciate that this is a work of scholarship which will be of the utmost assistance to practitioners, academics and students alike. No set of chambers or firm of solicitors will be able to give sensible advice on the law of contract without consulting it and I expect it to be much cited to and by the judiciary of the future.

The reason for this is that, on the one hand it is set out very clearly and is expressed in language which the simplest minded judge can understand and, on the other hand, it provides a comprehensive analysis of each of the aspects of the law of contract that it covers. So far as I can see, there are very few aspects of the law of contract that it does not cover. The reason for what I confidently predict will be its great success is that all four of its authors have brilliant academic backgrounds, all of course professors of law, and considerable practical experience.

I wonder how the book will come to be known. It seems unlikely that it will be known by the name of all four of its authors. So will it be known by the name of just one or two of its authors and, if so, which? I have no idea but I am sure will be a leading work on contract in the first part of the 21<sup>st</sup> century. Speaking for myself, as they say in the Court of Appeal, I am sure that it will be the first of many editions. I wish it (and all its authors) well.

Anthony Clarke  
Lord Clarke of Stone-cum-Ebony  
Supreme Court  
Parliament Square  
November 2011.

## PREFACE

Contract disputes are big business for practising lawyers. Or, if one wants to be strictly accurate, certain kinds of contract dispute are. A quick tour through a busy litigation department, or for that matter a swift glance at the subject-matter of cases reported under the rubric “contract,” will reveal that the vast majority of disagreements turn on one of three things: interpretation, the right to escape from what might otherwise be a done deal, and remedies. One of these issues, interpretation, is already and amply covered elsewhere. The other two form, in some detail, the subject of this book.

The first is the right of a party to disavow a contract, either because of some more serious factor such as error, misrepresentation or impossibility, or more simply because the other party has failed to perform its side of the bargain in whole or in part. And the second is the consequences of non-performance: the right of the party deprived to enforce its rights, whether by suing in debt or damages, or by obtaining performance in specie.

As readers have a right to expect in a work of this sort, we have always kept at least one eye on the needs of a busy practitioner to be quickly and concisely informed about the state of the law. Thus while not shrinking from detailing difficult points of theory where necessary, we have always remained aware that what matters is practical and commercial consequences—be this what a party should be advised to do in a difficult situation, the likely figures on an acceptable settlement cheque, or (if the worst comes to the worst) what a court is likely to say.

We are all enormously grateful to the editorial staff at Thomson Reuters for their unstinting hard work and their help in getting this project off the ground and bringing it in to a safe landing. Any errors remaining are, of course, our responsibility.

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