

# AN INTRODUCTION TO THE **LAW OF CONTRACT**

**STEPHEN GRAW**

SEVENTH EDITION



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# **An Introduction to the Law of Contract**

**STEPHEN GRAW**

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*To  
Dale, Genevieve and James*



# Preface

Perhaps the major development in the law of contract since the 6th edition in 2008 has been the renaming of the *Trade Practices Act 1974* (Cth) as the *Competition and Consumer Act 2010* (Cth), the removal of its consumer protection provisions into the new *Australian Consumer Law* (in Sch 2 to the *Competition and Consumer Act 2010*), the passage of adopting legislation in each of the states and territories to apply the *Australian Consumer Law* as a law of each of those jurisdictions and the consequential repeal of the *Trade Practices Act* mirror provisions that had previously been part of the Fair Trading Acts of each of those jurisdictions. This edition incorporates references to the new *Competition and Consumer Act 2010* (Cth) provisions as they apply, in particular, to misleading or deceptive conduct, consumer guarantees, unjust contract terms, exemption clauses, harassment and coercion, the effectiveness of disclaimers and the provision of alternative remedies.

Other legislative changes have also been noted – in particular, the repeal of the *Frustrated Contracts Act 1959* (Vic) and the re-enactment of its provisions as Part 2C of the *Fair Trading Act 1999* (Vic) and the replacement of the State and Territory Consumer Credit Acts (each containing the *Uniform Consumer Credit Code*) with the new *National Consumer Credit Protection Act 2009* (Cth), Sch 1 of which contains the new *National Credit Code*.

The case law in the intervening period has not resulted in any monumental change but the courts have addressed and clarified the law in a number of areas, applying existing principles to resolve specific problems and expanding and explaining the operation of those principles where that has been necessary. This edition incorporates discussion of the more important of those decisions as well as of some of the less important but quirky or interesting cases.

Included are *United Group Rail Services Ltd v Rail Corporation New South Wales and AMCI (IO) Pty Ltd v Aquila Steel Pty Ltd* (agreements to negotiate in good faith), *Olivaylle Pty Ltd v Flottweg AG (No 4)* (the postal rule and emailed acceptances), *PRA Electrical Pty Ltd v Perseverance Exploration Pty Ltd and Waldorf Apartment Hotel, The Entrance Pty Ltd v Owners Corp SP 71623* (contracts arising through conduct), *IATA v Ansett Australia Holdings Ltd* (interpreting commercial contracts), *Ford v Perpetual Trustees Victoria Ltd* (non est factum), *Insight Vacations Pty Ltd v Young* (strict interpretation of exemption clauses), *Tulloch v Braybon (No 2)* (undue influence), *Penola Trading Co Pty Ltd v Sunny Springs Pty Ltd* (accepted repudiation), *Agricultural & Rural Finance Pty Ltd v Gardiner* (waiver), *Bulldogs Rugby League Club Ltd v Williams* (restraint of trade), *Master Education Services Pty Ltd v Ketchell* (illegality) and *Campbell v Backoffice Investments Pty Ltd* (disclaimers).

I have also taken the opportunity to expand the existing treatment of a number of areas a little. Those affected include, in particular, silence as misleading or deceptive conduct, how the “signed memorandum” requirement can be satisfied



through a series of connected documents, how the exceptions to the parol evidence rule apply (particularly in cases of ambiguity), the basis on which rectification will be ordered, the operation of the pleas of duress, undue influence and unconscionability, the validity of restraint of trade clauses, the consequences of repudiation, and the calculation of damages.

However, as with previous editions, this edition does not pretend to be a complete statement of the law. Instead, it is, and is intended to be, an overview both of the relevant principles and of how they apply in practice. For that reason, considerable emphasis continues to be placed on what I hope are easily understood explanations supported by short summaries of the more important or illustrative cases that form what we know as the law of contract.

The completed work owes a lot to many people whose comments and suggestions have shaped many of the changes. In particular, I would like to record my sincere appreciation to Mr Stephen Kapnoullas from Swinburne University of Technology for his generous assistance with the real and potential impact of the *Competition and Consumer Act* on a number of important areas of the law. I would also like to thank the staff at Thomson Reuters, particularly Natasha Naude and Lara Weeks, and, most of all, I would like to acknowledge the assistance of my wife Dale who, once again, helped throughout in the research and writing of this edition. To all of them I convey my heartfelt thanks. The law as stated is as I understand it to be on 1 October 2011 and any errors remain, of course, all my own work.

STEPHEN GRAW

*Townsville*  
*November 2011*

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- s 3: 7.890

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- s 7: 7.110, 7.300, 7.740
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- s 11(7): 15.240

**Wrongs Act 1954**

- s 2: 16.490
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**Age of Majority Act 1977**

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- s 5: 7.30

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