



# Understanding Business Law

6TH EDITION

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# About the Authors



## Brendan Pentony

After completing his LLB from the Australian National University (ANU), Brendan Pentony's first academic post was as lecturer in commercial law at James Cook University in Townsville. He then moved to what is now the University of Canberra and as a resident of New South Wales he was admitted to the Bar in that state.

Before he moved to North-Western Tasmania Brendan combined work as a senior lecturer at the School of Law at the University of Canberra and as a member of the various manifestations of the Financial Ombudsman General Insurance Panel for 21 years. In the latter years of his tenure at the University of Canberra he taught law and business ethics in Singapore, Hong Kong and China. He completed his academic career with casual lecturing posts at ANU.

He was also actively engaged in researching corporate and taxation law issues. His extracurricular interests included the areas of consumer affairs, insurance and sports law.



## Stephen Graw

Stephen Graw started his teaching career as a casual tutor for the then Queensland Institute of Technology external law course in Townsville in 1978 while completing articles with a local law firm. Later that year he also started casual tutoring in commercial law at James Cook University, and took up a full-time position there the following year. Since then he has taught mainly in commercial law subjects (contract, commercial, company, partnership, employment and taxation law in particular) both in Australia and China and in both the School of Business and the School of Law. He is currently the head of the School of Law and deputy chair of the Council of Australian Law Deans. He also sits as the University Council's representative on the Council of Saints' Catholic College, a residential college within the university, where he is currently the deputy chair.



## David Parker

David Parker began his working life as a high school teacher in Victoria. While teaching David completed a law degree at Monash and moved from secondary teaching into what was then a teachers' college. David later moved to another institution which was the forerunner of Victoria University, where he has taught for some 25 years.

David mainly teaches in company law and tax law but has also taught in various subjects. David is currently the law degree coordinator, and works on the day-to-day administration of both the law degree and other degrees in which students study law. David has contributed to a number of books published by LexisNexis in the area of business law.



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Keturah has many years' experience as a legal practitioner, initially in private practice and later working for the State Bank of South Australia, Street Thompson Holdings Ltd (a listed public company) and the Australian Association of Permanent Building Societies.

Keturah holds the degrees of Bachelor of Laws and Master of Laws and a Diploma of Education from the University of Adelaide. She is admitted as a barrister and solicitor in South Australia, the Australian Capital Territory and the High Court of Australia.



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Elfriede Sangkuhl coordinates and teaches revenue law and the law of employment as a lecturer at the University of Western Sydney.

Prior to commencing law studies in 1999, Elfriede was a chartered accountant, specialising as an auditor and corporate advisor for local and international corporations. Elfriede was prompted to pursue studies in law by an increasing concern with issues of justice and equity. Her last professional assignment as a corporate advisor was for a German government agency established as a result of the reunification of Germany. She worked to assist business enterprises formerly owned by the East German state establish themselves as viable businesses in an open economy.

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# Preface

This is the sixth edition of *Understanding Business Law*, which is designed to serve business law students throughout Australia. We hope that it is also the first port of call when people in commerce think that they may have a legal problem and need to call in the lawyers. Business law in Australia never stands still, and that is why there have been six editions of *Understanding Business Law*. Recent cases and legislation have contributed to the development of the book.

Readers will notice a different format in this edition. The authors and editorial staff at LexisNexis are acutely conscious of how difficult it is to plough through hundreds of pages of what may appear to be a quagmire of words. So the sixth edition is intended to be reader-friendly and, with its revised format, more student-friendly.

The sixth edition introduces Keturah Whitford and Elfriede Sangkuhl as contributing authors. It is opportune to acknowledge the departure of Jann Lennard, whose career trajectory took her in a different direction. Jann played an important role in the five earlier editions.

The authors are pleased to acknowledge the roles of the commissioning editor at LexisNexis Butterworths, Carolyn Chamberlain; her successor, Emma Hutchinson; academic developmental editor Kerry Paul; and editor Daisy Coles in bringing about this edition. And, of course, the people behind the scenes who have made it possible.

The law discussed in this edition is as it was on 31 July 2012.





# Table of Cases

*References are to paragraphs  
Extracted case examples are in bold*

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# How to Study from this Book

## Key Learning Areas

When you have studied this chapter, you should be able to:

1. understand how the employer/employee relationship is regulated in Australia;
2. recognise when a person becomes an employee, as opposed to a subcontractor or contractor working for a business;
3. understand the difference between a casual employee and a permanent employee.

Key Learning Areas list the important legal ideas that you should focus on when you read a chapter.

## Setting the Scene

*In January of 1997 Deutz Australia Pty Ltd, a warehouse operation, requires a forklift driver. Deutz engages a labour hire firm, Skilled Engineering, to organise for a skilled forklift driver, Mr Sutton, to work at their warehouse. Skilled pays Mr Sutton, and Deutz pays Skilled.*

*On 28 January Mr Sutton is navigating between the aisles with a forklift in doing his job of picking stock (engine motors) and placing it in racks in the warehouse.*

Setting the Scene is a practical scenario that provides a context for the legal principles you are learning.

## Introduction

The law of employment has developed as a response to the need to establish relationships between those who undertake employment and those who employ. This area of law has, in recent times, been highly politicised, and as a result there has been a great deal of legislative activity.

This chapter guides you to the key legislative instruments and case law that define the employment relationship in Australia. It explores the duties and responsibilities that employees and employers owe each other, taking into account how these

The chapter introduction establishes the concepts that you need to know.

CASE EXAMPLE

*Williams v MacMahon Mining Services Pty Ltd* (2010) 201 IR 123; [2010] FCA 1321

**FACTS** In November 2006 Mr Williams was employed at the Argyle diamond mine in Western Australia by MacMahon Mining Services Pty Ltd. The contract of employment provided that Williams would be paid an hourly rate of \$40 per hour and

The rate of pay is all inclusive and takes into account all responsibilities, disallowances ... and includes payment for all hours necessary to undertake your duties, and as a casual employee, a loading in lieu of paid leave entitlements.

A Case Example is a relevant case that highlights the particular area of law being discussed.

## Summary

**9.50** This chapter has set out to explain the major issues encountered in employment laws regulating the employment relationship, including:

- the difference between a permanent employee, a casual employee, an independent contractor and a third-party employee;
- the duties and responsibilities owed by employers and employees in the employment relationship; and

The Summary is a quick way to review the important points of the chapter.

## Key terms

**Casual employee** – an employee who works under an informal, uncertain arrangement with her employer

**Constructive dismissal** – where an employer behaves in a manner that amounts to a breach of contract of employment, such that the employee is entitled to terminate employment without notice

**Contractor** – a self-employed person operating his or her own business, with autonomy and considered to have equal bargaining power as those who are

The Key terms list and define the chapter's key concepts.

**Practice questions**

1. You own a newsagency business. In your business you employ John as a casual employee for 15 hours a week to deliver papers five days a week for 8 hours each day. You supply John with a vehicle to perform the delivery. John gets paid \$25 per hour. John has been delivering papers for the last 10 years for your business. You have never paid him sick pay, holiday pay or long service leave. John leaves the job, as he is now 65 years of age and wants to retire. Advise John any leave entitlement for accrued holiday pay and long-service leave.

Practice questions assist you to revise your reading and test your understanding.

**Websites and further reading**

ASIC <<http://asic.gov.au>>  
 Australian Tax Office <[www.ato.gov.au](http://www.ato.gov.au)>  
 Commonwealth Government business information <[www.business.gov.au](http://www.business.gov.au)>

R Baxt, K L Fletcher and S Fridman *Corporations and Associations: Cases* (9th ed, LexisNexis, Sydney, 2003).  
 J Fitzpatrick, C Symes, A Veljanovski and D Parker *Business and Corporations Law* (LexisNexis, Sydney, 2011).  
*Ford's Principles of Corporations Law* (online looseleaf, LexisNexis).

Websites and further reading give you additional sources of information to broaden your knowledge.

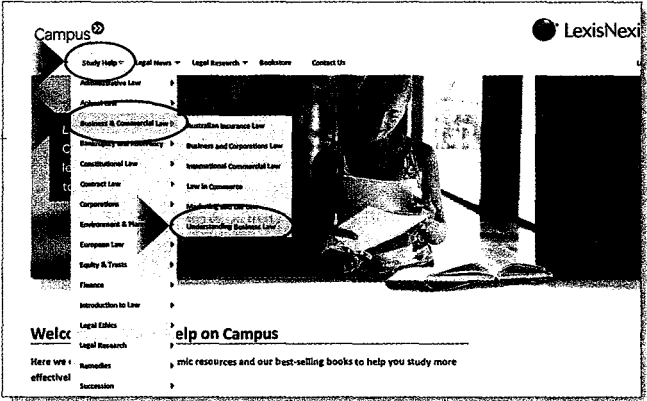
**Table of Cases** *References are to paragraphs. Extracted case examples are in bold.*

<b>A</b>	<b>Abercrombie v Wollington</b> (1956) ... 20.8	<b>Aquaculture Corp v New Zealand Green Mussels</b> (1985) ... 21.72
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The Tables of Cases and Statutes in the front of the book (before Chapter 1) list the cases and legislation that are referred to throughout the book. Use these to do quick searches for key cases and legislation when you undertake any research and class preparation.



CAMPUS STUDY HELP found on our popular Campus website, provides useful resources to help you succeed in your studies. See <[www.lexisnexis.com.au/understanding-business-law-6ed](http://www.lexisnexis.com.au/understanding-business-law-6ed)>

**LECTURER NOTE** Teaching resources are provided on request. Please ask your State Relationship Manager to give you access to this material: <[www.lexisnexis.com.au/en-au/academic/contact-us-academic.page](http://www.lexisnexis.com.au/en-au/academic/contact-us-academic.page)> or on 1800 772 772.