



AN INTRODUCTION TO THE  
**LAW OF CONTRACT**

8TH EDITION

**STEPHEN GRAW**

Lawbook Co.



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

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

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**8TH EDITION**

**LAWBOOK CO. 2015**

Published in Sydney by

Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

100 Harris Street, Pyrmont, NSW

First edition 1990

Second edition 1993

Third edition 1998

Fourth edition 2002

Fifth edition 2005

Sixth edition 2008

Seventh edition 2012

National Library of Australia

Cataloguing-in-Publication entry

Graw, Stephen.

An introduction to the law of contract/Stephen Graw

8th ed.

Includes index.

978 0 455 23364 2.

Contracts—Australia

346.9402

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Editor: Lara Weeks

Product Developer: Natasha Naude

Publisher: Robert Wilson

Printed by Ligare Pty Ltd, Riverwood, NSW



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*Dale, Genevieve and James*



# Preface

This edition marks 25 years since this book's first publication in 1990. Over the intervening period the basic principles of the law of contract have remained essentially unchanged. As would be expected, there have been many significant developments over 25 years, through both legislation and the decisions of various courts, in the way in which those principles are applied in particular situations.

That trend has continued in the three years since the last edition and the major changes to, and developments of, the law over that time have collectively necessitated this new edition.

Of those developments, perhaps the most significant have been those that resulted from the High Court's decisions in *Andrews v ANZ Group Ltd* and the associated decisions of the Federal Court in *Paciocco v ANZ Group Ltd* and the Victorian Court of Appeal in *Cedar Meats (Aust) Pty Ltd v Five Star Lamb Pty Ltd* (dealing with penalties); *Equuscorp Pty Ltd v Haxton* and *Australian Financial Services and Leasing Pty Ltd v Hill Industries Ltd* (restitution); *Kakavas v Crown Melbourne Ltd* ('special disability'); *Clark v Macourt* (the timing of damages); *Electricity Generation Corp v Woodside Energy Ltd* (the meaning of terms in commercial contracts) and *ALH Group Property Holdings Pty Ltd v Chief Commissioner of State Revenue of the State of New South Wales* (novation).

A number of important State and Territory court decisions have also affected the law. They included the decisions in *oOH! Media Roadside Pty Ltd v Diamond Wheels Pty Ltd* and *PT Arutmin Indonesia v PT Thiess Contractors Indonesia* (frustration); *Birdanco Nominees Pty Ltd v Money* and *Wallis Nominees (Computing) Pty Ltd v Pickett* (restraint of trade clauses); *MacKinlay v Derry Dew Pty Ltd* (severing); *Kellas-Sharpe v PSAL Ltd* (penalty clauses); *Citigroup Pty Ltd v National Australia Bank Ltd* (restitution and change of position); *Ashton v Pratt (No 2)* (illegality); *La Rosa v Nudrill Pty Ltd* (exemption clauses and the effect of a prior course of dealing); *Forty Two International Pty Ltd v Barnes* and *Alliance Craton Explorer Pty Ltd v Quasar Resources Pty Ltd* (implied terms); *Bustfree Pty Ltd v Llewellyn* (economic duress); *McIvor v Westpac Banking Corporation* and *Aboody v Ryan* (undue influence); *Tomasetti v Brailey* and *Jamieson v Westpac Banking Corporation* (the impact of taxation on the calculation of damages); *Candy v Bauer Media Ltd* (injunctions); *Gallinar Holdings Pty Ltd v Riedel* (mistake); *Lew Footwear Holdings Pty Ltd v Madden International Ltd* (the postal rule); and *Diagnostic Services Pty Ltd v Healthscope Pty Ltd* and *Androvitsaneas v Members First Broker Network Pty Ltd* (obligations to act in good faith).

Also included in this edition are references to a number of important statutory changes including the replacement of the *Federal Magistrates Act 1999* (Cth) by the *Federal Circuit Court of Australia Act 1999* (Cth) – converting the Federal Magistrates Court to the Federal Circuit Court of Australia; changes to the



unconscionability provisions in the Australian Consumer Law; new Commercial Arbitration Acts in each of the jurisdictions (except the Australian Capital Territory); and the replacement of the *Fair Trading Act 1999* (Vic) with the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

Once again, I have also taken the opportunity to expand the existing treatment of a number of areas a little but, as with previous editions, this edition does not pretend to be a complete statement of the law. It is, and is intended to be, an overall coverage of the relevant principles (and of how they apply in practice). With that in mind, the emphasis continues to be on explanation and illustration of how the law of contract works.

Like its predecessors this edition owes much to many people. I would particularly like to note my sincere appreciation to Mr Simon Walker for his research assistance. 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 preparation 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 2014. Any errors remain, of course, all my own work.

STEPHEN GRAW

*Townsville*  
*October 2014*

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