

By Elisabeth Peden

And you thought everything there is to know about contract has been said! Nothing could be further from the truth. The law of contract is constantly evolving as it faces consumer, corporate and government issues in the 21st century that could never have been foreseen when contract law emerged as a distinct area of law hundreds of years ago in marketplaces and fairs. This edition examines the multi-faceted operation of contractual principles that today apply to so many aspects of individual and corporate life.

The Court of Exchequer 200 years ago would never have conceived that contract law might be applied to shrink-wrap and click-wrap contracts. David Bolton details how many enter into such contracts each day, arguably with no real understanding of the contractual implications. As there is 'one law of contract' in Australia, the principles affecting one type of transaction will be relevant to different transactions. For example, much of our law concerning breach and repudiation has grown out of English maritime law cases, but is readily applied here to sale of land transactions. Amy Douglas-Baker considers the fundamentals of repudiation, citing caselaw that might assist when advising on whether particular conduct amounts to repudiation.

Contract law has developed principles dealing with the procedure leading up to a contract, often termed 'vitiating factors'. John Tarrant considers whether the principle that a thief holds property rights on trust for the victim's benefit ought to apply when property has been transferred as a result of fraudulent conduct during contract formation.

Stephen Carius reconsiders various approaches to 'mistake', and highlights the importance of considering the factual nature of an issue before legally labelling it as such.

We now live in a 'statute law world', and legislation has an ever greater importance in contractual disputes, usually providing protection beyond common law principles. Michelle Sharpe considers the operation of s51AC TPA, in particular, in relation to retail leasing. However, s51AC may impact on any factual situation involving the provision of goods and services and a corporation.

Often lawyers advise in relation to a discrete contractual issue or clause. Indemnity clauses are a complex and much-misunderstood aspect of contractual advice and litigation. Emma Reilly and Lily Sher dissect the *Andar* High Court decision to provide guidance in this tricky area. A perennial thorn in the side of litigators, legal costs following injury claims and the *Legal Profession Act 2004* (NSW) are considered by Phillipa Alexander. Finally, while there is 'one contract law', implied terms may apply to just one particular contractual relationship. Verity McWilliam and Katrina Huang analyse the existence of an implied obligation of mutual trust and confidence in Australian employment contracts, with reference to a recent SA case and comparisons with the UK and NZ. ■

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