
FOREWORD

It is a rare event to be able to write a foreword for a new type of book. We are now thoroughly familiar with textbooks, monographs, practitioner works, text cases and materials books and journal articles on the law of contract. This book is different in that it indexes leading writings on the law of contract, and does much more than merely list all the significant writings: the author provides a succinct account of the major pieces.

In this electronic age one might be forgiven for asking whether there is a need for a book of this type. After all, it is possible to search electronically for much legal material. However, it is not possible to search electronically for everything with ease. In particular, it can be extremely difficult to find essays which are published as chapters in books. Further, search engines do not differentiate between publications in terms of their quality. Thus, in drawing together in one volume leading contributions to our understanding of the law of contract, this book provides an extremely valuable service.

This book will be of interest to students, academics and practitioners. Its relevance to students and academics is clear. Perhaps less clear is its significance for practitioners. If this book had been produced thirty years ago, its relevance to practitioners would have been questioned. But times have changed. Today the work of academics is cited to and by appellate courts in many of our leading contract cases. It is therefore necessary for counsel to be familiar with the leading academic contributions to the issue that is before the court.

A book of this nature ideally requires an interest in academic legal issues as well as an involvement in legal practice. Adam Kramer fits these requirements perfectly: he is a barrister with a busy practice in commercial chambers, he has spent time as an academic lawyer in a leading law faculty and he continues to produce impressive, scholarly articles on the law of contract. Indeed, one of his essays was recently cited by the House of Lords in *Transfield Shipping Inc v Mercator Shipping Inc* [2008] UKHL 48, a decision that is notable for its references to academic materials of the type to be found in this book.

This book will, I am sure, facilitate the further citation of academic articles in our courts and it will also assist students and academics in their research projects. I look forward to using it in my own research. I hope

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that it will be widely consulted and that in time it will provide a model that others working in different areas of the law will choose to follow.

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October 2009

<http://www.pbookshop.com>

PREFACE

Whether lawyers (and by this I include academics, practitioners and judges) are aware of a relevant article or chapter of commentary at the right time has more to do with accidents of location, good memory, and downright luck than with the merit of the piece. How often has a crucial article been found while looking for something else, or during an unfocused flick through journals, books of essays or the footnotes of another article? I have found it irritating as a barrister and academic writer to know that there is almost certainly a relevant and helpful article that, despite diligent efforts, I will only become aware of a few weeks after final submission of my skeleton argument or publication of my own article. It is equally unsatisfying as an author of law writings to know that your carefully crafted contribution may well not be as widely read and therefore influential as it deserves.

Of course, there are the electronic indices and the commercial legal information providers, but I have found these variously not comprehensive, unwieldy, insufficiently discerning, uninformative or (for those not in universities) expensive. It is hoped that this book is none of those things.

The purpose of this book, then, is simply to make research by all contract lawyers easier. I have not sought to create an exhaustive database, but rather to include important and well-spread examples of works in each particular topic, knowing that the footnotes within those works will lead to further useful works. I have covered contract law not because it is the area most in need of an index and digest, but because it is the area I know best. Other books on other areas (probably written by other authors) may follow.

Readers that way inclined may also find this book interesting as showing how academic debate and publishing operates. Reading for this book I observed the worst and best of academia. I saw the sometimes justified but sometimes shameful republishing of the same article under different titles on different continents, and the churning out of banal pieces with no apparent purpose. I also saw the writers returning to wrestle with a topic again and again, and insightful contributions to a debate being overlooked by other academics for no good reason, or insightful debates that have been ignored in the courts. It is not always the fittest meme that survives, and

any writer in universities knows that the demands of funding and promotion can steer the topics and destinations of research as much as inspiration and genuine interest. However, although I saw a lot of writing that added nothing or (which is not the same thing) was for other academics and could have no useful application to any point that might arise in a court, I also saw a large body of clever and helpful analysis that might well contribute to a skeleton argument or appellate judgment if only it were known of.

I began this experiment in around 2002, and Richard Hart, always game for a “punt” (his word), contracted it for publication shortly afterwards. I was a lecturer then, building on the increasingly long bibliographies at the end of my lecture notes. I then moved to London, became a barrister, got married, and wrote a book about how to become a barrister (also published by Hart), in that order. This book has progressed, ever so slowly, throughout. However the Alexander Maxwell Scholarship that I was awarded in 2007 allowed me to justify taking time out of my practice to finish this book off, and without that scholarship this probably would never have been finished. The other patrons have been my wife, Kathryn, and our cat, Daisy, neither of whom miaowed when I spent evenings and weekends working through volumes 25–46 of a particular journal rather than spending them at home. Thanks also go to Jamie Edelman for putting me right on a few points, and various friends whose early input helped shape the book.

A final thought: I invite readers not to rage into the abyss at glaring omissions or misunderstandings I have made of their own or others’ works, but to let me know about them (akramer@3vb.com). If this book works, there will be a second edition eventually, and I can correct the failings of the first and improve the usefulness of the endeavour. (There may also be a companion website to allow for more prompt updating and correcting, an e-book should come out shortly after the print version, and that may be later adapted into an online searchable electronic resource.)

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May 2009

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