

Book Reviews

Breach of Contract (2nd edition)

J W Carter, Law Book Company Limited
RRP \$125.00

The 1980s was a decade which saw a great increase in academic and professional interest in the law of contract, and a surge of publications in the field. One of the early major publications was the first edition of this work in 1984.

Although by his extensive writings Professor Carter has established himself as a leading authority in the field, this particular work seemed to escape the widespread recognition that its substance merited.

For this reader, the reason is the form and layout of the book. It is structured upon 75 propositions expressed in articles, à la *Bowstead on Agency* or *Dicey & Morris on Conflict of Laws*. But a *Bowstead* or *Dicey & Morris* it is not. The law of breach of contract does not happily lend itself to this structure, which requires much restatement, definition and cross-referencing.

With this structure it must be well nigh impossible to combine accuracy with a fluency which makes the book easy to read. Professor Carter chooses accuracy. Yet it is inevitable that the dogmatic propositions in the articles must often be read with qualifications expressed only in the text, or footnotes.

As the principles of estoppel and restitution, and remedial legislation such as the *Contracts Review Act*, assume increasing importance in the working out of contractual disputes, it is essential that fundamental contract doctrine is expounded clearly and precisely. Until the law is known the application of equity or of remedial legislation is impossible. One of the virtues of this book is the author's insistence on precision in classification. Whether it be conditions and contingencies, dependent and independent obligations, repudiation and anticipatory breach, implication of terms in fact and in law, or election and estoppel, Professor Carter delineates the role of each concept with care.

It is when Professor Carter allows himself the luxury of extended discussion that the book is at its best. His discussion of *White & Carter (Councils) Limited v McGregor* (1962) AC 413 is illuminating. He provides the comparison with American law to demonstrate the essential point of principle which that case raises. Is a party faced with repudiation bound to mitigate by accepting the repudiation, if continuing with performance would increase the sum for which the defendant would be liable? Or is there no obligation to mitigate before the plaintiff suffers damage from the defendant's breach, so that if the repudiation is not accepted and the plaintiff continues his performance (assuming it not to depend on the defendant's cooperation) he can insist on the price? The House of Lords, of course, answered that the plaintiff was not bound to accept the repudiation and could continue performance.

One senses that Professor Carter has little sympathy for the fuzzy notions that are suggested to overcome the perceived unreasonable consequences of the decision. Assessing the

legitimacy of the plaintiff's interest, or his reasonableness, does not give the certainty which the proper application of contract law should give. Professor Carter, although recognising the possibility that an Australian court might manufacture a novel equitable jurisdiction to restrain an "unreasonable" election, would clearly have the matter resolved by the logical application of contractual principle, even if that means reconsidering the basis of the decision.

Perhaps the best sections of the book are those on repudiation and anticipatory breach, and the interpretation of time stipulations, where the analyses are thorough and stimulating.

In general, the exposition throughout the book is clear once readers have fixed in their minds the particular article under discussion.

For an advocate or adviser wanting to refine their propositions with precision this book provides valuable assistance. For a practitioner it provides a valuable source of references to the English as well as the Australian and New Zealand cases. Comparisons are frequently drawn with American law. The book repays study and deserves widespread acceptance as a work of reference. □ R W White

Taken On Oath, A Generation of Lawyers Jon Faine

Federation Press November 1992 RRP \$35.00

Adapted from the acclaimed radio series broadcast on ABC Radio National's Law Report, *Taken On Oath, A Generation of Lawyers* fills a gap in the contemporary history of the legal profession in Australia.

Thirty old lawyers talk about the past: thirty trustees of a treasure chest of stories about the evolution of our law, our legal system and, of course, our lawyers.

So much has changed in the way we "do" law, just in the working life of the people in the book. From the time when a will was prepared on parchment for a few shillings, in a woodpanelled room with a lino floor, through to personal computers and fax machines in the skyscraper-based, marble-clad offices now common amongst the mega-firms.

But it is not just the physical surrounds that have changed. The ethics, the methodology, the entire culture of the practice of law have been transformed in the fifty or sixty years documented here.

People from NSW interviewed in the book include Leycester Meares, Elizabeth Evatt, John Bowen, Hal Wootten, Fred Newnham and barristers' clerk Ken Hall. Interviews of people from other States include Dame Roma Mitchell, former SA Chief Justice John Bray, Sir John Starke from the Supreme Court of Victoria, Sir Reginald Smithers, formerly of the Federal Court, Sir Edwin Stanley, formerly of the Supreme Court of Queensland, and pioneering women lawyers Joan Heenan and Molly Whitehouse, respectively from WA and Queensland. □