a benefit on T, B should be able to sue on T's behalf to obtain the relief promised to T.

Overall, this book is a refreshing overview of the current state of English contract law, frequently enlivened by Professor Andrews' vivid turn of phrase. It will not, and is not intended to, replace the practitioner's bible in *Chitty on Contracts*; but it is a valuable addition to the literature.

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Australian Contract Law in the 21st Century. Edited by JOHN ELDRIDGE and TIMOTHY PILKINGTON. [Alexandria, NSW: The Federation Press, 2021. xxvi + 325 pp. Hardback $160.00. ISBN 978-1-760-02253-2.]

Formal separation of the common law of Australia from the common law of England can be dated with precision to the ultimate abolition of all appeals to the Privy Council from all Australian courts on the simultaneous commencement of the Australia Act 1986 (Cth) and the Australia Act 1986 (UK) on 3 March 1986. A little more than nine months later, in *Cook v Cook* (1986) 162 C.L.R. 376, the High Court of Australia seized the occasion to recant earlier statements of deference to decisions of English courts. English precedents were declared no longer to be presumptively binding on Australian courts. Like the precedents of other common law legal systems, they were to be treated as useful only to the degree of the persuasiveness of their reasoning.

Heralded by that declaration of decisional independence was the flourishing in the late twentieth century of a distinctively Australian common law. The distinctiveness of the Australian law of contract that began to take shape during that period lay less in the fundamentals of contract doctrine than in the inter-relationship of contract doctrine with other areas of law. One of those other areas was increasingly ubiquitous statute law which had come since the Trade Practices Act 1974 (Cth) to govern the formation and conduct of commercial relationships through the imposition of general norms of conduct backed up by a suite of mainly discretionary remedies. Another area of significance comprised the doctrines and remedies of equity, which had retained a vitality and distinctiveness of their own, especially in New South Wales. Another was the emerging common law of restitution, still shaking off the chains of "quasi-contract". By 1987, in *Pavey & Matthews Pty Ltd. v Paul* (1987) 162 C.L.R. 221, building on the earlier analysis of Sir Frederick Jordan in *Horton v Jones* [*No 1*] (1934) 34 S.R. (N.S.W.) 359, there had emerged a nascent Australian law of restitution for work done under a failed contract. By 1988, in *Waltons Stores (Interstate) Ltd. v Maher* (1988) 164 C.L.R. 387, building on the earlier analysis of Sir Owen Dixon in *Thompson v Palmer* (1933) 49 C.L.R. 507 and *Grundt v Great Boulder Pty Gold Mines Ltd.* (1937) 59 C.L.R. 641, there had emerged a full-blown Australian doctrine of promissory estoppel.

In the events that unfolded over the ensuing decades, two related themes came to distinguish the trajectory of the law of contract in Australia from that in England. One was the relative intolerance of Australian law for an expansion of the common law of restitution to play anything other than a subsidiary part in contractual relationships. The other was the relative tolerance of Australian law for contractual doctrine to be overlaid by equitable doctrine implemented through discretionary remedies.

The apogees of the divergent trajectories were on display in the radically different approaches to the doctrine of penalties taken by the High Court of Australia in *Andrews v Australia and New Zealand Banking Group Ltd.* (2012) 247 C.L.R. 205 and by the Supreme Court of the UK in *Cavendish Square Holding BV v Makdessi* [2016] A.C. 1172. To the High Court, the doctrine was the "product of centuries of equity jurisprudence" applicable to a "collateral stipulation" in the nature of a security for the satisfaction of a "primary stipulation". To the Supreme Court, the same doctrine was a common law rule applicable only to a breach of contract. Facing up to the difference in *Paciocco v Australia and New Zealand Banking Group Ltd.* (2016) 258 C.L.R. 525, French C.J. made the point that "[t]he common law in Australia is the common law of Australia". Yet even as French C.J. wrote, influences tending to reconvergence were in play.

Complementing the judicial development of a distinctively Australian law of contract in the late twentieth century was the advent of a distinctively Australian academic literature on the subject matter. Before 1986, the only general textbook on contract law making substantial reference to Australian case law was an "Australian Edition" of *Cheshire & Fifoot's Law of Contract*, first published in 1966. 1986 saw the publication of Kevin Lindgren, John Carter and David Harland's *Contract Law in Australia* (Sydney 1986). The following year saw the publication of another original work on Australian contract law by Don Greig and Jim Davis. Others followed.

Since the 1980s, however, a generation of Australian contract scholars has emerged with a less nationalistic agenda. Having undertaken post-graduate studies principally at Oxford and Cambridge, they are less inclined to treat divergences between English and Australian understandings of contract doctrine as regional variations on common themes borne of differences in legal cultures and local circumstances, worthy of study from a comparative perspective, than they are to treat those divergences as manifestations of positions taken by protagonists in a global contest of ideas. The common law in Australia has for many of them come to be seen less as the common law of Australia than as a localised contestable reflection of a Platonic form.

Australian Contract Law in the 21st Century, a collection of 13 essays with a valuable foreword by Bill Gummow, provides a snapshot of Australian contract law scholarship at this moment in time. As described by its editors in their introduction, the collection "does not . . . purport to offer up an encyclopaedic survey of every important question in the modern Australian law of contract", nor "to proffer a prediction as to the path the law will take in coming decades", but "does . . . seek to make a contribution to understanding a number of debates and questions in an important and complex branch of the law".

To be found in the collection are distinctively Australian contributions by Nick Seddon on Commonwealth, state and local government contracts (ch. 10), by Allison Silink on the current status of *Waltons Stores (Interstate) Ltd. v Maher* (ch. 7) and by Warren Swain on the influence of equity (ch. 9). A contribution by Mark Giancaspro records an interesting empirical analysis the conclusion of which is that, contrary to what might have been thought to be the long-term antipodean implication of Grant Gilmore's famous pronouncement in 1974 of the death of contract in the US, the law of contract is very much alive in the contemporary practice of small to medium-sized business enterprises in Australia (ch. 13). A spirited rear-guard action by Rick Bigwood mounts a powerful argument that the decision of the majority of the High Court in *Thorne v Kennedy* (2017) 263 C.L.R. 85 transformed the doctrine of undue influence in Australia *sub silentio* from its former self into something closely resembling that described in Peter Birks and Chin Nyuk Yin's essay "On the Nature of Undue Influence" in J. Beatson and D. Friedmann (eds.), *Good Faith and Fault in Contract Law* (Oxford 1995) (ch. 8).

For the most part, however, the contributions could equally have appeared under the title *English Contract Law in the 21st Century*. That is obviously so for the informative critique by Andrew Burrows, now Lord Burrows, of the decision of the Supreme Court of the UK in *Morris-Garner v One Step (Support) Ltd.* [2019] A.C. 649, concerning what are now known as "negotiating damages" (ch. 3). But it is so also for the detailed appraisal by Eli Ball of the decision of the High Court of Australia in *Mann v Paterson Constructions Pty Ltd.* (2019) 267 C.L.R. 560, concerning the entitlement of an innocent party to restitution of the value of services rendered under the contract for which no contractual right to payment had accrued at the time of acceptance of a repudiation (ch. 5). The split in the reasoning in that case is identified by Ball as "an uneasy one that exposes different outlooks on the relationship between contract and restitution".

The contribution by Ryan Catterwell (ch. 12) explores the patterns of thought that underlie legal reasoning about contract from the perspective of automated decision-making. The contributions by Katy Barnett (ch. 2) and David Winterton (ch. 4) are original reflections on the nature of contractual obligations through the prism of contractual remedies. For Barnett, nuances in the availability of and content of contractual remedies reflect differences in the concurrent and sometimes conflicting aims of contract, on the one hand, to encourage the efficient allocation of resources and, on the other hand, to uphold the importance of promising. In a thoughtful piece of conceptual cartography, Winterton offers some suggestions for how the boundaries between causation, remoteness and mitigation might be redrawn.

In light of *Mann v Paterson Constructions Pty Ltd.*, Timothy Pilkington's contribution (ch. 6) reflects on the long-standing issue associated with the decision of the English Court of Appeal in *Sumpter v Hedges* [1898] 1 Q.B. 673, in which a repudiating party was denied restitution for work done under a partially performed contract. Pilkington's contribution is a robust restatement and development of the argument originally presented by Ben McFarlane and Robert Stevens at the beginning of this century in their cogently argued and descriptively entitled essay, "In defence of *Sumpter v Hedges*" (2002) 118 LQR 569.

The contribution by Adam Kramer (ch. 1) usefully reprises the thesis presented in his earlier article, "Implication in Fact as an Instance of Interpretation" (2004) 63 CLJ 384 in light of the controversy engendered in the interim by the differences in the reasoning of Lord Hoffmann in *Attorney-General of Belize v Belize Telecom Ltd.* [2009] 1 W.L.R. 1988 and of Lord Neuberger in *Marks and Spencer plc v PNB Paribas Securities Services Trust Co. (Jersey) Ltd.* [2016] A.C. 742. Kramer's thesis is not dissimilar to that cryptically expressed by Mason J. in *Codelfa Construction Pty Ltd. v State Rail Authority of New South Wales* (1982) 149 C.L.R. 337 that "the implication of a term is an exercise in interpretation, though not an orthodox instance".

Most sobering, however, is the contribution of Lisa Spagnolo (ch. 11). Spagnolo's contribution serves appropriately to place Australian contract law (and by implication the domestic contract law of other common law systems) into an international commercial context. Within that context, hard-fought contests over contract theory (including those which have existed historically over the need for contractual consideration and those which continue to exist over the implication of an obligation of good faith in contractual performance) can be seen to diminish in significance as strongly held doctrinal positions have been ignored or abandoned in pursuit of the interests of practical commerce.

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