Contract Law in Perspective

By Linda Mulcahy and John Tillotson

4th edition 2004

Cavendish Press

(Pages 276 + xix; ISBN: 185941771X)

Reviewed by Peter Macfarlane[*]

Although most contract law textbooks focus on the rules concerning contract formation, terms, vitiating factors, breach and remedies, or are books of cases and materials, there are also an increasing number that deal with the socio-legal aspects of contract law and/or critical legal theory. And so it was with interest that I read (for the first time) this fourth edition of *Contract Law in Perspective*. I was interested in what the perspective would be and what new insights such an approach might take to a traditionally "black letter law" and "rule based" subject.

The book is divided into six parts and twenty chapters. Part one includes an introduction and a factual scenario called 'The Sad Tale of Angie and Georgie'. This scenario is used as a reference point for revision questions which are included at the end of each chapter. Part two is a discussion of classical contract law theory including the competing issues of freedom of contract and the need for fairness and equality in the market place. Part 3 is entitled 'Making a Deal'. It comprises four relatively short chapters dealing with pre-contractual negotiations, offer and acceptance, consideration, estoppel and intention. Part four has the catchy title 'Bargaining, Naughtiness and Formation Problems'. This part concerns itself with misrepresentation, mistake, frustration, duress and unconscionability. Part five considers the terms of a contract, including the difficulties arising from standard form contracts and the impact of legislative regulation. This same part also includes a discussion of restraint of trade. The final part is about breach of contract, remedies and alternative dispute resolution.

So what is the perspective of this text? The authors give us a clue in chapter 1 where they suggest that any study of contract law is dangerously abstract if it concentrates on legal technicalities with paying attention to the reality of contract-making in everyday business life.

The objective of the text therefore is to give an understanding of contract law in the context of the realities of business practice, an object that the authors achieve. Throughout the book there are links and references to how business people approach the notion of contract formation, terms and breach – not from the standpoint of legal precedent, or the rules concerning consideration and terms, or the fine distinctions that the law makes, for example as between conditions, warranties and intermediate terms, but rather from a much more practical and pragmatic standpoint with greater focus on customers, orders, future profits,

informality, "getting things done" etc. Thus the authors refer to 'risk and planning' in order to minimise business disputes and disruption. Chapters 15-20 especially, focus on the practicalities of business, the approach of business people to the making of agreements and the resolution of disputes.

Although the authors give some attention to a critical analysis of contract law, for the most part readers will be disappointed if they pick up this book believing it is a text on critical legal theory; although chapters three, four and five do raise some of these issues. Rather, this text focuses the discussion of contract law around the fact that business people are generally less concerned than lawyers about the use of words and the precise expression of the agreed terms. This is the strength of the book although in this context there might have been more consideration given to the burgeoning doctrine of good faith which might be said to be of more importance in business negotiations than is currently recognized by the law.

The book is written largely for a United Kingdom market and so there are numerous references to UK and EU legislation and protocols. This of course is to be expected and although such a focus might be seen as limiting the application of the work outside that jurisdiction, these references are helpful to those in other jurisdictions in understanding the increasing role played by other governments and legislators so far as contract law is concerned.

The chapter concerning dispute resolution is especially helpful. As lawyers we should be more attuned to the possibility of resolving conflicts without recourse to the courts. Following the practical approach taken by the authors, they might consider including, in the next edition, a chapter dealing with drafting issues; perhaps by reference to the drafting of exclusion clauses, limitation of liability clauses, penalty clauses, terms that represent a condition, restraints of trade, dispute resolution clauses, liquidated damages *et cetera*.

The book does not replace a text on contract law of the more traditional kind nor does it purport to do so. I would recommend the text, especially to those who are interested in contract law from a business perspective.

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