

COMMERCIAL LAW IN NEW ZEALAND

by *W.C.S. Leys M.A., LL.M. and J.F. Northey B.A., LL.M. (N.Z.) Dr. Jur (Toronto). Third Edition. Wellington. Butterworth & Co. (New Zealand) Limited. 1966. XXXV and 798 pages (including appendices and index). New Zealand price £3.17s.6d.*

This book is now well established as a student's textbook in Commercial Law. In one volume it deals with the general principles of the law of contract, special commercial contracts, bankruptcy, insurance, arbitration and the Chattels Transfer Act. It is inevitable that a text which seeks to deal with such a wide area of the law must be content with stating general propositions and leaving unchartered underlying questions of principle and areas of doubtful authority. Students will be grateful to the authors for a compressed and straightforward account of the law which particularly at examination time assists easy memorisation, but it is open to argument whether a subject of the complexity of Commercial Law is best approached in this way. It is becoming increasingly apparent that the law in this field rests on concepts and questions of policy which require assessment and reconsideration.

The third edition follows five years after the second and the text has been brought up to date by reference to recent decisions and developments in the law. There are, however, some surprising omissions. The decision of the House of Lords in *White & Carter (Councils) Ltd. v. McGregor* [1962] A.C. 413 on anticipatory breach is not mentioned. The chapter on the law of suretyship and guarantees makes no reference to *Western Credit Ltd. v. Alberry* [1964] 1 W.L.R. 945 where the Court of Appeal distinguished *Yeoman Credit Ltd. v. Latter* [1961] 1 W.L.R. 828. The discussion of the Sale of Goods Act s.28 (2) is incomplete without reference to the judgment of the Court of Appeal in *Newtons of Wembley Ltd. v. Williams* [1964] 2 All ER. 135, [1965] 1 Q.B. 560. Two New Zealand cases on contract which could usefully have been discussed but are not included in the new edition are *Spooner v. Eustace* [1963] N.Z.L.R. 913 and *Producer Meats Ltd. v. Borthwicks* [1964] N.Z.L.R. 700 C.A.

Reference is made to the Final Report of the Committee on Consumer Protection (H.M.S.O. Cmnd 1781, 1962) in the chapters on sale of goods, but the chapter on hire purchase makes no mention of the Report, although there were a number of recommendations which could have usefully been referred to.

There are few changes of substance introduced by the new edition. The chapters on contract remain substantially unchanged. It is disappointing to find that the effect of *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 645 on the law relating to innocent misrepresentation is not explored. The development and use of the "collateral contract" again finds only passing mention. A textbook on Commercial Law could usefully include an outline of the Restrictive Practices legislation but this is only briefly referred to in the book. The Trade Practices Amendment Acts of 1961 and 1965 are not mentioned. The chapters on sale of goods remain in this writer's view the most useful section of the book. New Zealand authorities are referred to wherever relevant and special developments of the law in New Zealand are noted. The new edition includes a discussion of the decision of Richmond J. in *Hammer & Barrow v. Coca Cola* [1962] N.Z.L.R. 723 dealing with the buyer's right to reject the goods. The section on fundamental breach has been rewritten to take account of several recent cases, although the new edition appeared too early to include an assessment of the recent House of Lords decision, *Suisse Atlantique Societe d'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale* [1966] 2 W.L.R. 944.

The new edition has appeared at an unfortunate time so far as the chapters on bankruptcy are concerned. The Insolvency Bill of 1965 has proposed several major changes in the law, which will soon render much of this section of the book out of date. The authors have sought to assist the student by including a separate chapter outlining the most important amendments in the Bill, but this chapter may prove a trap for the unwary as it appears likely that substantial amendments will be made to the Bill before it becomes law.

The chapter on hire purchase has been rewritten in the third edition, in order to take account of the effect on the law of the Hire Purchase and Credit Sale Stabilisation Regulations 1957 and several recent cases arising under the regulations. It seems unfortunate that the opportunity was not taken to examine at greater length the position of the finance corporation in hire purchase transactions. Little attention has been paid to the tripartite nature of many hire purchase transactions, where although the agreement is made with the finance corporation, the negotiations have been conducted through a dealer. Developments of the law on this point in England and Australia are of interest in New Zealand but find no mention in this chapter.

The new edition continues the practice of earlier editions by excluding all footnotes and incorporating references in the text. This form of setting out has the advantage of assisting in straightforward presentation but has the inevitable consequence that many propositions of law are made for which no authority is given.

It is admittedly undesirable to clutter the text of a student's book with a large number of authorities, but a judicious use of footnotes would enable authority to be given for points of detail in the text.

The authors are to be commended for again providing the student with an armoury of references to articles in legal periodicals. There are many points of obscurity in the law which space has not permitted discussion of in the text, but the references provided, will in many cases, enable the enquiring student to further explore these areas of the law.

P.D.M.

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