

Remarks on the launch of K Lewison and D Hughes *The Interpretation of Contracts in Australia* (2nd edition) Law Book Co, 2025

The Hon AS Bell

18th Chief Justice of New South Wales

Supreme Court Gallery

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Welcome to our Supreme Court Gallery which is fast becoming the venue *du jour* for book launches!

I have both launched books and had books launched.

Book launches are invariably happy occasions, primarily for the author or authors who have toiled mightily, usually in or into the early hours of the morning, to give birth or, in cases such as the present, rebirth to their work.

The enjoyment of such occasions – that is to say, the launch as opposed to the writing - is always enhanced by the possibility of a glass of white wine and there is sometimes a correlation between the amount of white wine available and book sales. I continue to research this theory.

Not all *launchers* of books are always charitable. I remember the late David Jackson AM KC who launched my book on *Forum Shopping* asking me "Who is the other person interested in anti-suit injunctions?" To be fair to David, he did not pose this interrogatory during the actual launch of the book!

This book, which it is my pleasure to launch tonight, like the common law itself, had its original conception in England with Kim Lewison (as the now Lord Justice of Appeal then was) publishing the first edition of *The Interpretation of Contracts* in 1989, the year I finished law school. In his preface, he lamented the absence of such a book for the busy commercial barrister and observed that it had become clear to him that if he wanted such a book, he would have to write it himself! Very practical; very British! Sir Kim is now the longest serving member of the Court of Appeal for England and Wales.

I can distinctly recall making extensive use of the first edition when I came to the Bar in early 1995 and, as Jim Spigelman recalled in writing the foreword to the first Australian edition in 2012, when the first English edition was published, its practical utility for any commercial barrister was immediately obvious.

The English version of the text is now in its 8th edition, retailing for just under A\$1000. For this reason alone, I recommend the local adaptation!

But I hasten to add that this is far from the only reason to favour this new local edition.

We have long passed the stage where the practice of the law in Australia is dependent upon English textbooks just as we have long passed the stage where English case law is regularly cited in our courts. These days, that is a relatively rare occurrence in the New South Wales Court of Appeal.

Now that is not to say that foreign texts and authorities may not be and are not cited but it is to make the point that we have long ceased to have any *dependency* on foreign texts and authorities in our day to day practice of the law, as was once the case. That is a function of many things: first, the quality and sophistication of Australian judges and writers; second, the greater availability of resources and especially “unreported” judgments through the important work of Austlii and other service providers such as Jade; thirdly, there has been a divergence in areas of Australian and English law as, in the present context, Lord Hamblen’s John Lehane Memorial Lecture last year entitled “*Contractual interpretation: An Anglo/Australian journey*” highlighted.¹

This new edition of *Lewison and Hughes* draws attention to such divergences. One example is on page 492 in relation to ambiguity where two conflicting judgments of the Court of Appeal for England and Wales and the NSW Court of Appeal are referred to, with the authors expressing their opinion that, and I quote, “the approach of the New South Wales Court of Appeal is to be preferred”. So sound and astute.

It was an excellent idea at the end of the first decade of the 21st century, also known as the naughties, for David Hughes, no doubt encouraged by Chief Justice Spigelman for whom he worked as a researcher for a couple of years, to undertake in his years prior to

¹ The lecture is available at <https://supremecourt.uk/speeches/contractual-interpretation>. See also Justice Leeming’s introductory remarks to this lecture at https://supremecourt.nsw.gov.au/documents/Publications/Speeches/2024-speeches/Leeming_hamblen_introduction20240903.pdf.

coming to the Bar an Australian adaptation of Kim Lewison's immensely practical work. As Mr Lewison explained in his own first edition, compiling in effect a systematic database of principles of contractual construction and interpretation was of critical importance for him in his practice of commercial law at the English Bar and he was generous enough to share his work with the profession. David Hughes, who has become a very well respected counsel at the NSW Bar and who I would fully expect to take silk in the near future, has done the same for the Australian legal profession.

The first Australian edition of this work was widely welcomed and generously received upon its publication in 2012. It was full of astute observations, as is the second edition. I was particularly taken by an early observation that "in the case of a literary work, an ambiguity may enrich the text and may have been a deliberate technique on the part of the author." To my observation, in the realm of contract law, ambiguity only enriches the Bar!

I can tell you that the second edition of *The Interpretation of Contracts in Australia* is a third longer than the first, and that there was a 13 year gap between editions. In that period of time, the entire composition of the High Court of Australia has changed and over 40 New South Wales Supreme Court judges have retired and been replaced by a far more attractive cohort! They used the first edition regularly and will use this edition regularly. It is replete with references to recent Australian appellate court authority, and should be in every commercial barrister's library.

One of the features and great strengths of this work, which is continued in its second edition, as it is in the 8th English edition, is that it is generous in its *quotation* of judicial utterances as opposed to the footnoted citation of authorities for a proposition expressed in the authors' words in the text. Not all authors or editors are reliable. Without detracting from its otherwise great reputation, there are various propositions in earlier editions of *Dicey & Morris*, for example, which do not appear to be wholly supported by the authorities cited in support of them. What has occurred in some cases is that judges have cited propositions in *Dicey* without going to the underlying reference sources. One then discovers in subsequent editions a footnote to the effect that "This proposition was approved in such and such a case". So the common law evolves!

The importance of the topic covered in thorough and careful detail in this second edition is reflected in the fact that, since the publication of the first Australian edition, a number of other texts dealing partly or exclusively with the Australian law relating to contractual interpretation have been published and both David Hughes and Sir Kim have generously acknowledged the emergence of such works in the preface to this new edition of this work. Some of those competitors may even be in this audience, drinking the prospective royalties of their rivals! The NSW Bar is so collegiate!

It remains to congratulate the authors, and David in particular, on bringing this second Australian edition to the profession. Undertaking such a task while also conducting a busy practice as well as

discharging family responsibilities (in such a lovely and energetic family, may I add, and whose presence I acknowledge tonight), is no mean feat.

It therefore gives me great pleasure to launch the second edition of Lewison and Hughes *The Interpretation of Contracts in Australia*.