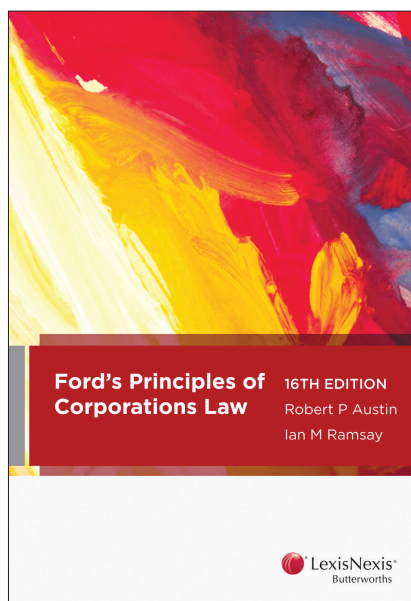


## Ford, Austin and Ramsay's Principles of Corporations Law (16th ed)

LexisNexis Butterworths | 2015



*This text is principally designed with law and business students in mind. It is the smaller, more concentrated, sibling of the loose-leaf practice which is published for practitioners. But, for those practitioners for whom corporations law is not a focus, its value cannot be underestimated.*

loose-leaf practice which is published for practitioners. But, for those practitioners for whom corporations law is not a focus, its value cannot be underestimated.

The corporation, being the commonest commercial vehicle, has worked its way into every crevice of the law. Common law practitioners need to grapple with questions concerning the extent to which a director of a closely-held ('one-man-band') company is liable for conduct (such as negligent building work) done by that director. Family lawyers will come across issues relating to the control and obligations of a corporate trustee. *Principles of Corporations Law* provides, if not a complete answer, then a convenient starting point for researching the answer.

### The Structure

*Principles of Corporations Law* comprises 28 chapters divided into seven parts.

Part I is comprised of three chapters dealing with the nature of companies, the history of company law and an overview of the statutory regulatory environment including the Corporations Act, the ASIC Act and discussion of various other committees and panels charged with some form of corporate oversight.

Part II deals with incorporation and its consequences and the formation, promotion and establishment of companies.

Part III contains six chapters which get to the heart of corporate governance. Chapters focus on corporate governance

rules; the governing organs of the company: the board of directors and the general meeting; directors' duties; conflicts of interest; members' remedies and accounts, audit and disclosure. Questions concerning the formalities of holding a board meeting, the validity of directors' decisions and the rights that members may exercise (as a derivative action, oppressive conduct or fraud on the minority) are explored in detail.

Part IV is entitled 'Corporate Liability'. This part contains five chapters which explore the nature of corporate capacity and the ability to bind a corporation as well as the ratification of defective transactions and a company's liability for civil and criminal wrongs.

Part V is devoted to corporate finance: equity finance, dividends and debt finance. This part also contains chapters on creditors' protection, security holders and fundraising by issuing shares.

Part VI is concerned with corporate restructuring including takeovers and reorganisations and elimination of minority holdings.

Part VII is, of course, concerned with the end of the corporate story: external administration. Chapters are devoted to general principles of administration and insolvency, receiverships, voluntary administrations and winding up. These chapters are preoccupied with the various forms of external administration, the duties of the directors and external administrators, a basic overview of the

This year marks the 40<sup>th</sup> Anniversary of the first edition of this textbook. In this sixteenth edition, the authors, Dr Austin and Professor Ramsay, have taken the opportunity to update the fifteenth edition (2013) by reference to some significant changes to corporations law, both legislative and in decided cases.

Legislative changes include the enactment of the:

- Personal Liability for *Corporate Fault Reform Act 2012* (Cth);
- *Directors' Liability Reform Amendment Act 2013* (Qld);
- *Corporations and Financial Sector Legislation Amendment Act 2013* (Cth);
- *Corporations Legislation Amendment (Derivative Transactions) Act 2012* (Cth); and
- *Corporations Amendment (Simpler Corporate Bond and Other Measures) Act 2014* (Cth).

This text is principally designed with law and business students in mind. It is the smaller, more concentrated, sibling of the

## BOOK REVIEWS

*Ford, Austin and Ramsay's Principles of Corporations Law (16th ed)* (LexisNexis Butterworths, 2015)

procedure for winding up companies and the effect of a winding up order.

### Conclusion

*Principles of Corporations Law* is part of the academic furniture. Practitioners who have access to its kindred loose-leaf service will find more answers and deeper analysis there. This book, though almost

2000 closely-typed pages, is not ashamed to admit that it is written with the student, not the barrister, in mind.

But are we not still all students of the law? Who among us can say that we would not benefit from the practical guidance offered by these most erudite experts of company law? This book has

been augmented and refined over 40 years and 16 editions. Due to the breadth of the subject, practitioners will often need to go elsewhere to explore a topic in more detail, but this book is full of signposts that will point the practitioner down the right path.

Reviewed by **Nicolas Kirby**

## Electronic Contracts (2nd ed)

By Simon Blount | LexisNexis Butterworths | 2015



Simon Blount's *Electronic Contracts* re-enters the arena at a time when courts across all common law jurisdictions are increasingly open to adapting contract principles to accommodate the digital age.

In 2007, for example, the District Court of Illinois found that a relatively informal email exchange between the parties amounted to an offer and acceptance and thus was an enforceable agreement.<sup>1</sup> The next year in *Jafra v Ezemvelo KZN Wildlife*<sup>2</sup> the South Africa Labour Court held that a text message was an

unequivocal acceptance of all the terms of a contract sent via email.

A year earlier in *eBay International AG v Creative Festival Entertainment Pty Limited*<sup>3</sup> the Federal Court of Australia seamlessly welded practicalities of online festival ticket purchases to general principles and consumer legislation when Rares J held an online purchase to be 'a contract in writing signed by the parties.'<sup>4</sup> On the particular facts this excluded terms found on paper tickets. Rares J held:

By clicking on the relevant buttons and, by the computer bringing up all the terms needed to purchase a ticket...the whole transaction was in writing, signed and agreed by the parties.<sup>5</sup>

Blount discusses significant NSW first instance decisions grappling with the changing landscape. Examples include *Smythe v Thomas*<sup>6</sup> a decision of Rein AJ (as his Honour then was) which reviewed classic auction principles contextualised by eBay.

Likewise Fullerton J's analysis of whether or when software may be 'goods' in *Gammasonics Institute for Medical Research Pty Ltd v Comrad Medical Systems Pty Ltd*<sup>7</sup> balanced incompatibility

*Blount continues to provide valuable academic insight into a rapidly emerging area of law that is underserved by existing resources.*

between 'intangible' software and consumer protection legislation with the need to preserve consumers rights in an environment where 'online download is a method of distribution that is likely to become the preferred method of distribution.'<sup>8</sup>

Evidently, courts have been willing to solve the problems associated with virtual reality by adjusting the principles of contract law accordingly. But still, Blount writes in the introduction, 'it is the problems, rather than the solutions, that have continued to inspire this second edition.'<sup>9</sup>

True to his word Blount's second book tackles the ongoing legal challenges faced by common law courts with the emergence of electronic contracts. In this edition Blount continues to provide valuable academic insight into a rapidly emerging area of law that is underserved by existing resources.

## BOOK REVIEWS

*Electronic Contracts (2nd ed)* (LexisNexis Butterworths, 2015)

Expanding on the first edition published in 2008 Blount purports to identify and discuss the major heads of contract law that are challenged by the digitisation of trade and commerce.

The book investigates a number of important questions raised in the recent case law: Does a retinal scan amount to a valid signature? Do hyperlinks provide sufficient notice of terms? Does a school policy requiring students to submit homework via the 'Turnitin' website amount to duress?

The book is divided into ten chapters covering all aspects of contract law that have been impacted by recent digitisation. The first five chapters investigate issues of formation, building on the previous edition by analysing recent case law from a number of common law jurisdictions. In particular Blount examines decisions out of New Zealand, Singapore, South Africa, Canada and Ireland to present a comprehensive picture of the common law of electronic contracts as it stands in all common law jurisdictions.

In Chapter 6 ('Shrinkwrap, Clickwrap and Browsewrap Agreements') Blount investigates the legality of popular e-contract forms. This chapter will prove useful to those seeking to navigate the complex jargon raised in electronic contract disputes.

A number of recent cases have turned on the issues of incorporation of terms and implication, raised by Blount in Chapter 7 ('Incorporation of Terms'). In particular he considers a number of superior court and appellate decisions in a variety of common law jurisdictions to make insightful predictions as to the future interaction between electronic agreements and principles of incorporation.

Vitiating factors and an analysis of legislation applying to misleading

and deceptive conduct are dealt with respectively in chapters 8 ('Vitiating Factors') and 9 ('Misrepresentation, Misleading and Deceptive Conduct and Jurisdiction').

The second edition has also inserted a new Chapter 10 ('International Conventions and Model Laws') that deals with international agreements that have formed in response to technological influences on contract law. This chapter responds to mounting global awareness of the difficulties presented by electronic dealings, though ultimately comes to the conclusion that 'the problems may be more apparent than real.'

Since the first edition of Blount's book there have been a number of major developments in the law of electronic contracts. Online shopping, for example, is now more familiar to consumers than the weekly grocery shop. With this in mind Blount consciously reiterates the process of casualisation that serves as a backdrop to recent developments in the law. His keen awareness of the risks associated with such a familiarity demonstrates his understanding of the behaviour of Internet natives who have become complacent in their digital landscape. In particular he cautions courts on potential exploitation of unwary web-users. He advises common law courts to be 'alert to the circumstance that a click signatory, in the course of browsing the internet, may not reasonably know that a webpage is contractual in nature.'<sup>10</sup>

An aspect of this book worth noting is the way in which Blount has segmented issues into digestible sections making it an ideal resource for students and professionals wanting a clear and accurate statement of the law. Exhaustive referencing, however, makes it an equally useful starting point for those interested in further research.

Another triumph is the simplified but comprehensive way that Blount deals with the jargon and technical language abundant in electronic contract disputes. An example is the term 'clickwrap' contract that describes an agreement where users assent to terms presented on a screen by clicking on a virtual button. More recently in the United States a new category of 'modified clickwrap contracts' has emerged where terms are presented in hyperlinks near a virtual assent button. Blount deals with these and other complex issues in an accessible way without losing the depth of analysis expected of such a text. The detailed table of contents supports such a balance. By providing a detailed snapshot of the major issues Blount easily keeps the bigger picture in mind when dealing with the finer points.

It is of credit to the author and all involved that a book covering such complex material is both factually accurate and coherently written from front to back. At only 232 pages long, *Electronic Contracts* will make a fitting handbook for law students and practitioners alike.

**Reviewed by Richard Bell**

### Endnotes

1. *SEKO Worldwide LLC v Four Soft Limited* (2007) 503 F Supp 2d 1059.
2. *Jafta v Ezemvelo KZIN Wildlife* [2008] ZALC 84.
3. *eBay International AG v Creative Festival Entertainment Pty Limited* [2006] FCA 1768.
4. *eBay International AG v Creative Festival Entertainment Pty Limited* [2006] FCA 1768 [49].
5. *Ibid* [49].
6. *Peter Smythe v Vincent Thomas* [2007] NSWSC 844.
7. *Gammasonics Institute for Medical Research Pty Ltd v Comrad Medical Systems Pty Ltd* (2010) 77 NSWLR 479.
8. *Ibid* [44].
9. Simon Blount, *Electronic Contracts*, (LexisNexis Butterworths, 2<sup>nd</sup> ed, 2015) 9.
10. *Ibid* 161.