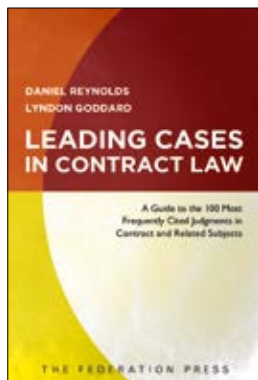


## Leading Cases in Contract Law

By Daniel Reynolds and Lyndon Goddard | The Federation Press | 2017



This work is the sibling of the authors' previous publication, *Leading Cases in Australian Law*. It presents a collection of the 100 most frequently cited judgments in contract law and allied concepts (such as restitution and estoppel) each accompanied by a statement of principle and a short note. It belongs to a genre of legal work with considerable legacy by reference to the popularity in its time of the 13 editions of Smith's *Leading Cases on Various Branches of the Law with Notes* (1837 to 1929).

One could not find a better summary of principle or place in law of any of the featured cases in this work. The statements of principle range from the straightforward (*Hoyt's Pty Ltd v Spencer* (1919) 27 CLR 133, 'A collateral contract is enforceable if it is consistent with the main contract') to the nuanced (*Koompahtoo Local Aboriginal Land Council v Sanpine* (2007) 233 CLR 115, in relation to intermediate terms); they are all succinct and, in the view of the reviewer, accurate. The case notes are divided into a statement of facts; the determination of the Court, or the *relevant* determination where the case deals with aspects of law outside contract; a collection of commonly cited passages; and the author's commentary on the decision and its place in relation to the other cases featured. The authors manage this task in two pages for each judgment.

*Leading Cases in Contract* is accompanied by an appendix containing, in alphabetical order, each of the cases attached to the applicable one-sentence proposition of law. The appendix alone justifies its position in the chambers of any commercial barrister or, even better, within easy reach on the bar table.

These estimable practical features should not obscure the startling experience of reading *Leading Cases in Contract* cover to cover. Like *Leading Cases in Australian Law*, it applies what the authors describe as a 'mechanistic'

methodology to assembling a compilation of 100 cases. This involves a strict organisation by order of the frequency of citation in later decisions, determined with the assistance of LexisNexis Australia. Differing from any of its predecessors, it is not a generalist work but contained to a defined field of law. The absence of curation results in the persistent themes of contract rising and falling with an unpredictable tempo. The effect, read through, is something akin to seeking an understanding of the evolution of dinosaurs by reference to exhibits at the Australian Museum ordered by popularity. To take the most apparent example, notable and not always consistent authorities dealing with aspects of construction appear in the first half of the work at #1 (*Codelfa*), #3 (*Toll*), #5 (*BP Refinery*), #12 (*Pacific Carriers*), #29 (*McCann*), #39 (*Woodside*) and #43 (*Maggbury*). Despite the best efforts of the authors in reconciling and cross-referencing these cases in their commentary, the result is disorienting.

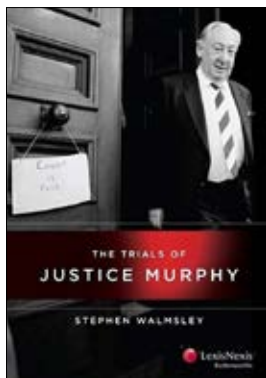
Nonetheless, approaching the work in this way offers for those reasonably acquainted with the field a refreshing insight into the controversies that have animated contract law in Australia. Even the most jaded reader might find awakened a long-dormant desire to discuss with any unfortunate colleagues in reach the historically, if not recently, vexed questions of ambiguity and estoppel. This peculiar aspect, and the value of *Leading Cases in Contract* as a reference work, make it a valuable addition to the contractual corpus.

Reviewed by Alexander H Edwards

## The Trials of Justice Murphy

By Stephen Walmsley | LexisNexis Butterworths | 2016

Despite competition from other states, New South Wales remains home to Australia's



greatest judicial controversy: the allegation that a justice of the High Court, Lionel Keith Murphy, twice attempted to pervert the judicial power of the Commonwealth. This controversy is the subject of Stephen Walmsley's

excellent book, *The Trials of Justice Murphy*. In late 1984, Murphy, then a sitting High Court judge and a former Senator and federal attorney-general, was charged with two counts of attempting to pervert the course of justice. In one count, the prosecution alleged that in early 1982 he attempted to induce NSW Chief Magistrate Briese to intervene in committal proceedings in respect of forgery and conspiracy to forge charges laid against a solicitor, Morgan Ryan, that were before another magistrate. It was alleged that Murphy had a close association with Ryan and that he had cultivated Briese by telling Briese that he would advance the cause of independence for NSW magistrates with the state government. Murphy was accused of suggesting that Briese return this favour by helping Ryan when he spoke to Briese in January 1982, saying 'And now, what about my little mate?' Murphy consistently denied that he was as close to Ryan as suggested by the prosecution. He said that it was Briese who lobbied him about guarantees of independence for magistrates and that it was Briese who first mentioned Ryan's case, not him. He denied he said those famous words (or ever used the word 'mate') or made any request of Briese about the Ryan case.

The other charge against Murphy was that he attempted to influence District Court Judge Paul Flannery who was to preside over Ryan's trial. The prosecution alleged that Murphy also cultivated Flannery and that, during a dinner on the Saturday night before Ryan's trial, Murphy implicitly suggested that Flannery should help Ryan when he complained to Flannery about the practice of prosecutors laying conspiracy charges when a substantive offence was available (as had supposedly occurred in Ryan's case). Flannery said Murphy referred to a recent High Court decision on that topic (*R v Hoar* (1981) 148 CLR 32). Ryan's trial was not mentioned at the dinner. Murphy denied that he cultivated Flannery, denied that he knew Flannery was the trial judge for Ryan, and said that it was Flannery who introduced the general subject of conspiracy charges at dinner.

(Spoiler alert.) At his first trial in 1985, Murphy was acquitted of the Flannery charge but convicted of the Briese charge. On appeal, he secured a retrial (*R v Murphy* (1985) 4 NSWLR 42). He was acquitted of the Briese count in April 1986. Murphy died of cancer six months later. In the meantime, a dispute had broken out over his entitlement to return to sit at the High Court. An inquiry into his conduct was commenced and then wound up while in its infancy. What became of that is now publicly available.

Murphy's two trials are the focus of Walmsley's book but they are only the middle chapters of a saga that the author lays out in a page-turner that begins with a dinner in 1979 attended by Briese, Ryan, Murphy, the Police Commissioner and Briese's pre-