

## CONTRACT LAW IN THE SOUTH PACIFIC



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Jennifer CORRIN

2<sup>nd</sup> edition

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## FOREWORD

The only criticism I have of this prodigious work is that the author has underplayed its significance. Tchaikovsky was worried sick when he started composing his Sixth Symphony that he had lost his creative flair and that it would be a flop. But it turned out to be one his greatest works. So it is with Jennifer Corrin who prefaces her wonderful second edition of *Contract Law in the South Pacific* with the misleading and slightly self-deprecating statement that it is 'designed primarily for students studying contract law in the South Pacific'. As if practitioners might consider glancing at it on the odd occasion if they have nothing better to do with their time.

No. This is not just a student textbook. It is an essential, invaluable and accessible tool for every lawyer in the South Pacific or any lawyer anywhere dealing with the South Pacific. That includes, especially, magistrates and judges. No one with a legal issue, whether in business, in private practice or in the public sector, or whether they are a bush lawyer in a village considering how to deal with a dispute over an agreement to sell customary land to a neighbour or a foreign enterprise, can gain an understanding of their legal rights and obligations, or those of their clients, or those of government, without an appreciation of the law of contract, as it applies in this region.

They will not find the answers in *Halsbury's Laws of England* or in any conventional contract text. Nor will they find them on the internet, easily. The answers are most likely to be found in this book; or at least there will be signposts to resolution.

The author sets out the basic principles in an agreeable and familiar way. For those of us raised on a diet of offer, acceptance and consideration, chapter headings such as 'Formation of Agreement', 'Acceptance', 'Intention to Create Legal Relations' and 'Privity of Contract' are instantly recognisable. We feel comfortable with the chapter outline, a valuable research tool in itself as it extends for 19 pages. The content of each of the 20 chapters is summarised in a helpful and informative way, providing users (not necessarily readers, as not many of us will have the time to read the book as if we are reading a novel) with the tools necessary to get down to the nitty-gritty of case law and statute law on all manner of contract issues.

We are often reminded by the author that a knowledge of the common law of England and Wales, alone, is only a first step when addressing any contractual issue in the South Pacific. Each jurisdiction has an independent legislature.

Statute law is an important modifier of the common law of contract. Lest we lapse in to a state of ignorant bliss and forget that were dealing with a myriad of disparate, dynamic and evolving cultures, Chapter 2, 'Contract and Customary Laws', has been introduced to edify us, and it does that in a profound and pithy way. While it is a pleasant thought that there is, or we should strive to achieve, a unified body of jurisprudence that can be called the contract law of the South Pacific, it does not exist and it is unlikely ever to exist, so it is not a useful endeavour to pretend otherwise or to strive to bring it into existence.

The five tables in the opening chapters are concise ready-reckoners of critical information essential to appreciating the interplay of common law, statute law and customary law that combine to form the body of contract law for each of the jurisdictions covered by this book.

It is particularly pleasing that Papua New Guinea (PNG) has been brought within the fold of this second edition. PNG is integral to the South Pacific. It is the most populous country in the region and it may well be the most litigious. There is a rich body of contract law, some of it home-grown, already in PNG; and its growth and maturity will be engendered by this work.

While there are separate legal systems in this part of the world, they are connected inextricably and symbiotically by the strength and endurance of their underlying cultures and traditions and the commonality of their historical development. While a significant decision by the Court of Appeal of Fiji on a thorny issue of contract law will not be binding on other courts in the region, it will be potentially of enormous persuasive value, if that issue is raised in another country in the region – and if the Fiji decision is known about.

This book is a terrific feat of scholarship. More than that, it is a work of great practical utility. No advocate in any court in the South Pacific should appear in a contract case ever again without checking this book first.

Justice David Cannings CBE  
Judge of the National Court and the Supreme Court  
of Papua New Guinea

## PREFACE

This book examines the principles of contract law that apply in the island countries of the South Pacific. It identifies the common law and statutes that govern that law within the member countries of the University of the South Pacific, that is, Cook Islands, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, and Vanuatu. This second edition also looks at the relevant law in Papua New Guinea.

Like many other branches of the law, contract law has yet to establish its own identity in the region. There is limited evidence of the emergence of a local jurisprudence, through either national parliaments or the courts. However, there are significant differences between South Pacific contract laws and those of England and Wales. This divergence is partly a result of legislative developments in the law of contract in England and Wales, which do not necessarily apply in the region. It is also the result of regional innovation in the form of legislative changes, particularly in the form of consumer protection legislation. In addition, there is some divergence in the common law, where local courts have, on occasion, departed from English decisions or applied them in the context of local factors. In some cases, the courts have followed the law in other parts of the Commonwealth and, for this reason, the book makes reference to the contract law of countries such as Australia and New Zealand. In a small number of cases, regional courts have begun to develop a unique jurisprudence more suited to local circumstances, and these decisions are highlighted in the text.

The phrase 'South Pacific contract law' is used in this book to distinguish regional law from that of England and Wales, rather than to denote a uniform law of contract in the South Pacific. There are significant differences between the contract laws of individual countries within the region. These differences are partly the result of diverging approaches taken by regional courts, particularly in how far each is prepared to depart from the common law of England and Wales. They are also the result of Pacific countries having disparate legislation in force, both in the form of different statutes introduced from overseas and of legislative innovation by some regional parliaments. These regional laws are compared and their distinguishing features discussed.

Divergence in the law of contract is also a consequence of the prevalence of customary laws, which often impact upon agreements and disputes at the village level. The status and application of customary laws differs from country to country in the region. In countries where customary laws are recognised as

a source of state law, they may have effect outside the village setting. In this second edition, this inter-relationship between customary laws and state law and the question of whether there is a customary law of contract are explored in an entirely new chapter.

This book is designed primarily for students studying contract law in the South Pacific. However, it is also intended as a source of reference for courts, lawyers, and individuals interested in exploring contract law as it operates in the South Pacific. Whilst contract law is still rooted in the common law of England and Wales, foreign textbooks on contract law are not adequate to cater for regional law students or lawyers. As mentioned in the preface to the first edition, breaking away from such texts encourages research into South Pacific law and provides a platform for the development of a regional jurisprudence, more in accord with local circumstances and culture. Whilst Pacific island countries 'saved' foreign law on independence, they did so as a transitional measure and did not intend to be bound forever to English law or academic works.

Thanks are due to Intersentia, the publisher of this edition, for the display of confidence in this area of publishing and for the editorial assistance. I should also like to thank my mentor, Professor Tony Angelo, and the Faculty of Law at Victoria University Wellington, where I conducted most of the research for this book. I must also thank those Pacific lawyers who have answered my queries about the law in force, in particular, Mr Nicholas Mirou at the University of Papua New Guinea, and my colleagues at the School of Law at the University of the South Pacific. The School kindly hosted my visit in July this year, during which I worked on the final stages of this book. Finally, I must acknowledge the contribution of my brilliant research assistant, Anna Kretowicz, for all her help in bringing this edition to fruition.

Jennifer Corrin  
6 November 2019

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