

ANSON'S Law of Contract

28TH EDITION

A. G. GUEST

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ANSON'S
LAW OF CONTRACT

BY JAMES ANSON, LL.D., F.R.S.

WITH A HISTORY OF THE SUBJECT BY RICHARD H. TAYLOR, LL.D.

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Preface to the Twenty-seventh Edition

This is the first edition of Anson's Law of Contract not to be published under the editorial hand of Tony Guest for almost forty years. The standards of scholarship, clarity and accessibility to students which he set were of the highest order. His is a hard, almost impossible, act to follow, but this is not the primary reason that more than fourteen years have passed since the last edition of Anson was published. I was asked to take on the editorship of the book at the end of 1988, but early in 1989 I was appointed a member of the Law Commission. Apart from drafts of the chapters on privity of contract and remedies, and some preparatory work, I was unable to do much work on the book until my term at the Law Commission ended in the autumn of 1994.

I have tried to maintain the high standards set by Tony Guest and, like him, not to lose sight of the fact that Sir William Anson intended his book to be a statement of the basic principles of the law of contract. My aim has been to produce the sort of book that I believe Sir William would have produced, had he been writing at the end of the twentieth century rather than in the last quarter of the nineteenth century. For example, I have tried to take account of the fact that contract is part of the law of obligations and that contractual obligations may overlap with tortious or restitutionary obligations, and to introduce students to areas in which non-contractual liabilities may be of significance in 'contractual' situations. I have also tried to give more emphasis to the effect of legislation to the extent this is appropriate in a book on general principles. The increased importance of equitable doctrines and principles in the law of contract is reflected in more extended treatment of, for instance, estoppel and undue influence.

Common law and statutory developments since the last edition have required substantial revision of much of the text, although less so in Part 6, Agency, and in Chapters 2 and 9, Formation and Illegality. But only two structural changes have been made. First, damages, specific relief and restitutionary awards are now dealt with in separate chapters. Secondly, there is no longer a separate chapter on the law of Restitution. Now that Restitution has been recognized as a distinct branch of the law of obligations, there is no case for a separate chapter in a book on the law of Contract, any more than there is a case for a chapter on Tort in such a book. The overlap between Restitution and Contract is addressed at appropriate points; for example, remedies for money paid and services rendered under ineffective or illegal contracts are discussed in the chapters on formation, capacity, duress, illegality, and frustration, and the recovery of money paid, recompense for services rendered and restitutionary damages are dealt with in the new chapter on restitutionary awards. The overlap with Tort is considered *inter alia* when dealing with contracts for services and liability for misrepresentation.

The first part of Chapter 7, on duress, draws on chapter 4 of my *The Use and Abuse of Unjust Enrichment* and Chapter 1 on the introductory chapter Daniel

Friedmann and I wrote for *Good Faith and Fault in Contract Law* which we edited together. I am grateful to him and also to the author of the summary of the early actions and the rise of *assumpsit*. Although this person wishes to remain anonymous, his identity will be obvious to legal historians. I am also very grateful to St. John's College, Cambridge and the Faculty of Law's Yorke Fund for support of a more material kind, and to the British Academy for making me an award under its Research Leave scheme which enabled me to take an extra term's leave to complete the book.

I have many other debts. Neil Andrews, Bill Cornish, and Francis Reynolds kindly read draft chapters. Peter Birks, Andrew Burrows, Malcolm Clarke, Stephen Cretney, Kevin Gray, Jonathan Leiboff, Toby Milsom, Elisabeth Peden, Dan Prentice, Takis Tridimas, Johnny Veeder, Tony Weir and other friends, colleagues and students answered my questions or alerted me to useful material. Toby Landau provided research assistance in the very early stages, and the staff of the Squire Law Library, in particular David Wills and Peter Zawada, provided invaluable assistance in tracking down material and in getting used to what was, for me, a new library. The editorial team at Oxford University Press has always been supportive. Richard Hart, who commissioned the project, was patiently encouraging throughout the fallow years and provided much practical assistance (including making arrangements for the typing of much of the book by Ruth Gladden). Michaela Coulthard and Angela Griffin have helped me through the final stages. I am also grateful to the publishers for preparing the tables and index. But my biggest debts are to Greg Tolhurst without whose efficient and dedicated research assistance over the last year this book would not have been finished, and to Charlotte, Sam and Hannah for tolerating my preoccupation with it.

The law is stated as at 31 January 1998, but it has been possible to include some material since that date.

J.B.

Cambridge
2 April 1998

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Aleyn	Aleyn	K.B.	1646-1648
All E.R.	All England Reports	All	1936-date
A.L.R.	Australian Law Reports	Australia	1973-date
Amb.	Amlbler	Ch.	1737-1783
Anst.	Anstruther	Exch.	1792-1797
Atk.	Atkyns	Ch.	1736-1754
B. & Ad.	Barnewall & Adolphus	K.B.	1830-1834
B. & Ald.	Barnewall & Alderson	K.B.	1817-1822
B. & C.	Barnewall & Cresswell	K.B.	1822-1830
B. & P.	Bosanquet & Puller	C.P.	1796-1804
B. & S.	Best & Smith	Q.B.	1861-1869
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C. & J.	Crompton & Jervis	Exch.	1830-1832
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C. & M.	Crompton & Meeson	Exch.	1832-1834
C. & P.	Carrington & Payne	Nisi Prius	1823-1841
C.B.	Common Bench	C.P.	1845-1856
C.B.N.S.	Common Bench, New Series	C.P.	1856-1865
C.L.C.	CCH Commercial Law Cases	All	1994-date
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Com. Cas.	Commercial Cases	All	1895-1941
Con.L.R.	Construction Law Reports	All	1985-date

Cowp.	Cowper	K.B.	1774–1778
Cox	Cox's Equity	Ch.	1783–1796
Cr. & Ph.	Craig & Phillips	Ch.	1840–1841
Cro. Eliz.	Croke, of the reign of Elizabeth	C.P., Q.B.	1582–1603
Cro. Jac.	Croke, of the reign of James	C.P., K.B.	1603–1625
Dalison	Dalison	C.P.	1546–1574
D.L.R.	Dominion Law Reports	Canada	1912–date
De G. & J.	De Gex & Jones	Ch.	1857–1859
De G. & Sm.	De Gex & Smale	Ch.	1846–1852
De G.F. & J.	De Gex, Fisher & Jones	Ch.	1859–1862
De G.J. & S.	De Gex, Jones & Smith	Ch.	1862–1865
De G.M. & G.	De Gex, Maenaghten & Gordon	Ch.	1851–1857
Doug. K.B.	Douglas	K.B.	1778–1781
Dr. & Sm.	Drewry & Smale	V.-C.	1860–1865
Drew.	Drewry	V.-C.	1852–1859
E. & B.	Ellis & Blackburn	Q.B.	1852–1858
E. & E.	Ellis & Ellis	Q.B.	1858–1861
E.B. & E.	Ellis, Blackburn & Ellis	Q.B.	1858
E.C.R.	European Court Reports	E.E.C.	1954–date
East	East's Term Reports	K.B.	1800–1812
Eden	Eden	Ch.	1757–1766
Esp.	Espinasse	Nisi Prius	1856–1857
Est. Gaz.	Estates Gazette	All	1858–date
E.G.L.R.	Estates Gazette Law Reports	All	1975–date
Exch.	Exchequer Reports	Exch.	1862–1865
F.L.R.	Family Law Reports	All	1980–date
F. & F.	Foster & Finlason	Nisi Prius	1856–1867
H. & C.	Hurlstone & Coltman	Exch.	1862–1866
H. & N.	Hurlstone & Norman	Exch.	1856–1862
H. Bl.	Henry Blackstone	C.P., Exch.	1788–1796
H.L.C.	House of Lords Cases	H.L.	1847–1866
Hare	Hare	V.-C.	1841–1853
Hob.	Hobart	K.B.	1603–1625
I.C.R.	Industrial Cases Reports	All	1972–date
I.R.L.R.	Industrial Relations Law Reports	All	1972–date
Ir. Rep.	Irish Reports	Ireland	1838–date
Ir. C.L.	Irish Reports, Common Law	Ir. Q.B.	1866–1878
J. & H.	Johnson & Hemming	V.-C.	1859–1862
J. & W.	Jacob & Walker	Ch.	1819–1821
J.P.	Justice of the Peace and Local Government Review	All	1837–date
John.	Johnson	V.-C.	1858–1860
K. & J.	Kay & Johnson	V.-C.	1854–1858
Keen	Keen	Rolls Court	1836–1838
Keilwey	Keilwey	K.B., C.P.	1496–1531
L.G.R.	Local Government Reports	All	1903–date
L.J.C.P.	Law Journal, Common Pleas	C.P.	
L.J.Ch.	" " Chancery	Ch.	
L.J.Ex.	" " Exchequer	Exch.	1832–1949

L.J.Q.B.	Law Journal, Queen's Bench	Q.B.	
L.T.	Law Times Reports	All	1859-1947
Ld. Raym.	Lord Raymond	K.B., C.P.	1694-1732
Lev.	Levinz	K.B., C.P.	1660-1697
Ll. L.R.	Lloyd's List Law Reports	All	1919-1950
Lloyd's Rep.	Lloyd's (List) Law Reports	All	1951-date
M. & G.	Manning & Granger	C.P.	1840-1844
M. & S.	Maule & Selwyn	K.B.	1813-1817
M. & W.	Meeson & Welsby	Exch.	1836-1847
Madd.	Maddock	V.-C.	1815-1821
Mer.	Merivale	Ch.	1815-1817
Mod.	Modern Reports	All	1669-1755
My. & K.	Mylne & Keen	Ch.	1832-1835
N.Z.L.R.	New Zealand Law Reports	N.Z.	1883-date
Nev. & M.	Nevile & Manning	K.B.	1832-1836
Noy	Noy	K.B.	1559-1649
P. & C.R.	Property and Compensation Reports	All	1950-date
Peake	Peake	Nisi Prius	1790-1812
Peere Wms.	Peere Williams	Ch.	1695-1735
Ph.	Phillips	Ch.	1841-1849
Q.B.	Queen's Bench Reports	Q.B.	1841-1852
R.P.C.	Reports of Patent Cases	Pat. Cas	1884-date
Russ.	Russell	Ch.	1823-1829
S.C.	Session Cases	Scotland	1906-date
Salk.	Salkeld	All	1689-1712
Sid.	Siderfin	All	1657-1670
Sim.	Simons	V.-C.	1826-1849
Sm. & G.	Smale & Giffard	V.-C.	1852-1857
St. Tr.	State Trials	—	1163-1820
Stra.	Strange	All	1716-1749
Swan.	Swanston	Ch.	1818-1819
T.I.R.	Times Law Reports	All	1884-1952
Taunt.	Taunton	C.P.	1807-1819
Term R.	Term Reports	K.B.	1785-1800
Ventr.	Ventris	All	1668-1691
Ves. Jun.	Vesey Junior	Ch.	1789-1817
Ves. Sen.	Vesey Senior	Ch.	1746-1755
W. Bl.	William Blackstone	K.B.	1746-1779
W.R.	Weekly Reporter	All	1853-1906
Wilmot	Wilmot	All	1757-1770
Wils.	Wilson	K.B., C.P.	1742-1774
Y. & C. Ch.	Younge & Collyer (Chancery)	V.-C.	1841-1843
Y. & J.	Younge & Jervis	Exch.	1826-1830
Y.B.	Year Books (with regnal year)		

Law Reports, 1865–date

L.R.C.P.	Common Pleas	}	1865–1875
L.R. Ch. App.	Chancery Appeals		
L.R. Eq.	Equity Cases		
L.R. Ex.	Exchequer		
L.R.H.L.	House of Lords, English and Irish Appeals		
L.R.P.C.	Privy Council Appeals	}	1875–1880
L.R.Q.B.	Queen's Bench		
L.R. Sc. App.	Scottish Appeals		
C.P.D.	Common Pleas Division	}	1875–1890
Ex. D.	Exchequer Division		
App. Cas.	Appeal Cases		
Ch. D.	Chancery Division	}	1875–1890
P.D.	Probate Division		
Q.B.D.	Queen's Bench Division		
A.C.	Appeal Cases	}	1891–date
Ch.	Chancery Division		
K.B. or Q.B.	King's (Queen's) Bench Division		
P.	Probate Division	}	1891–1971
Fam.	Family Division		
W.L.R.	Weekly Law Reports	}	1953–date

Periodicals

Aust. L.J.	Australian Law Journal
C.L.J.	Cambridge Law Journal
Can. Bar Rev.	Canadian Bar Review
Conv. (N.S.)	Conveyancer and Property Lawyer (New Series)
Harv. L.R.	Harvard Law Review
J.A.L.T.	Journal of the Association of Law Teachers
J.B.L.	Journal of Business Law
J.C.L.	Journal of Contract Law
L.Q.R.	Law Quarterly Review
L.S.	Legal Studies
M.L.R.	Modern Law Review
O.J.L.S.	Oxford Journal of Legal Studies
R.L.R.	Restitution Law Review
S.A.L.J.	South African Law Journal
S.J.	Solicitor's Journal